

Exhibit 1

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

Case No.: 07-CA-234085
07-CB-226531

REITH-RILEY CONSTRUCTIONS CO. INC
Respondent

And

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO
Charging Party

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO
Respondent

And

MICHIGAN INFRASTRUCTURE AND
TRANSPORTATION ASSOCIATION, INC.
Charging Party

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

LOCAL 324, INTERNATIONAL UNION OF |
OPERATING ENGINEERS (IUOE), AFL-CIO |
Respondent, |
and | Case No. 07-CB-226531
MICHIGAN INFRASTRUCTURE AND |
TRANSPORTATION ASSOCIATION, INC., |
AFL-CIO, |
Charging Party, |
RIETH-RILEY CONSTRUCTION CO., INC., |
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and | Case No. 07-CA-234085
LOCAL 324, INTERNATIONAL UNION OF |
OPERATING ENGINEERS (IUOE), AFL-CIO |
Charging Party. |

The above-entitled matter, came
on for hearing remotely pursuant to notice, via
videoconference, before CHARLES MUHL, Administrative
Law Judge, on Thursday, February 18, 2021, at 9:30 a.m.

<div>Page 1496</div> <div> <div>1 APPEARANCES</div> <div>2</div> <div>3 Counsel for the Acting General Counsel:</div> <div>4</div> <div>5 ROBERT DRZYZGA, Esq.</div> <div>6 SCOTT R. PRESTON, Esq.</div> <div>7 National Labor Relations Board, Region 7</div> <div>8 Patrick V. McNamara Federal Bldg.</div> <div>9 477 Michigan Avenue, Room 05-200</div> <div>10 Detroit, MO 48226</div> <div>11 (313) 226-3200</div> <div>12 Robert.drzyzga@nlrb.gov</div> <div>13 On behalf of the Charging Party:</div> <div>14</div> <div>15 AMY E. BACHELDER, Esq.</div> <div>16 Nickelhoff & Widick PLLC</div> <div>17 2211 East Jefferson Avenue, Suite 200</div> <div>18 Detroit, MO 48207</div> <div>19 On behalf of the Respondent:</div> <div>20</div> <div>21 STUART BUTTRICK, Esq.</div> <div>22 RYAN FUNK, Esq.</div> <div>23 BRIAN PAUL, Esq.</div> <div>24 ALEXANDER PRELLER, Esq.</div> <div>25 Faegre Drinker</div> <div>300 N. Meridian Street, Suite 2500</div> <div>Indianapolis, IN 46204</div> <div>(317)237-0300</div> <div>Stuart.buttrick@faegredrinker.com</div> <div>Ryan.funk@faegredrinker.com</div> <div>Brian.paul@faegredrinker.com</div> <div>Alex.preller@faegredrinker.com</div> <div>ALSO PRESENT</div> <div>Rob Konopinski, in-house counsel</div> <div>(Rieth-Riley)</div> <div>David Reynolds, NLRB</div> </div>	<div>Page 1498</div> <div> <div>1 EXHIBITS</div> <div>2 EXHIBIT IDENTIFIED IN EVIDENCE</div> <div>3 Company 1 1653 1653</div> <div>4 Company 2 1546 1546</div> <div>5 Company 3 1547 1548</div> <div>6 Company 88 1550 1550</div> <div>7 Company 89 1574 1574</div> <div>8 Company 141 1695 1695</div> <div>9 Company 191 1537 1537</div> <div>10</div> <div>11</div> <div>12 Union 18 1620 1620</div> <div>13 Union 19 1622 1622</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>
<div>Page 1497</div> <div> <div>1 INDEX</div> <div>2 WITNESS DIRECT CROSS CROSS REDIRECT VOIR DIRE</div> <div>3 K. Rose 1503 1587 1608</div> <div>4 C. Loney 1648 1662</div> <div>5 A. Bolanowski 1685</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>	<div>Page 1499</div> <div> <div>1 PROCEEDINGS</div> <div>2 (Time noted 9:07 a.m.)</div> <div>3 JUDGE MUHL: Let's go back on the record.</div> <div>4 Good morning, everybody. We're back for day 10 of</div> <div>5 Rieth-Riley Construction. Where we left off back at</div> <div>6 the end of July we were in the middle of Mr. Nystrom's</div> <div>7 testimony and he was scheduled to go forward with</div> <div>8 cross exam next. We're going to push that off to</div> <div>9 March because of his unavailability these next two</div> <div>10 days. We're resuming here on February 18th. I just</div> <div>11 want to make it clear in the record there were, I</div> <div>12 think, three postponements of hearing dates in October</div> <div>13 and December and January. That was due to COVID and</div> <div>14 we've all been negatively impacted by that; some of us</div> <div>15 more than others. And I'm glad to see everybody here</div> <div>16 today and that we're ready to go forward.</div> <div>17 So Rieth-Riley can proceed with its case and</div> <div>18 call it's next witness, after I address a couple</div> <div>19 preliminary things we talked about in our last</div> <div>20 conference call. So in the record -- well, Remy</div> <div>21 Kuhlsted testified back in July. And there was some</div> <div>22 use of his affidavit during his examination by</div> <div>23 Rieth-Riley. And the transcript indicates at Page</div> <div>24 1205 that the affidavit was admitted. That's Company</div> <div>25 187. In fact, it's not admitted. It's not showing up</div> </div>

<p style="text-align: right;">Page 1500</p> <p>1 in the electronic case file, but I want to clarify on 2 the record that affidavit was not admitted into 3 evidence. In terms of there were two others, Company 4 149 was entered into the record twice, two different 5 documents. And what Rieth-Riley did at the hearing 6 was change one of the two to Company 185. So I have 7 it that Company 149 is a document subpoena from 8 Rieth-Riley to the Union that is at the transcript at 9 1093 and the other document was during Mr. Augustine's 10 testimony, I think that was at 826. And I have that 11 down as not being offered. But just so it's clear in 12 the record, those are two separate exhibits. We 13 talked a little bit and there was oral argument back 14 in July concerning the General Counsel's request that 15 I conduct an in-camera inspection of certain documents 16 that Rieth-Riley withheld from subpoena production on 17 the basis of different privileges. I'm going to make 18 a ruling in writing on that and I will send that 19 around to the court reporter and to Counsel later 20 today or tomorrow. That's all I had on preliminary 21 matters, so Rieth-Riley can call its next witness. 22 MR. BUTTRICK: We're going to call Keith 23 Rose. Just to kind of continue the process we had 24 done in prior hearings with everyone's indulgence, 25 Kristina Kendall, our paralegal will be sending over</p>	<p style="text-align: right;">Page 1502</p> <p>1 MR. BUTTRICK: The Company calls Keith 2 Rose. 3 JUDGE MUHL: Mr. Rose, good morning. Can 4 you hear me okay? 5 THE WITNESS: Yes, sir. 6 JUDGE MUHL: Raise your right hand for me, 7 sir. Do you solemnly swear the testimony you're going 8 to give today is the truth, the whole truth, and 9 nothing but the truth. 10 THE WITNESS: I do. 11 JUDGE MUHL: Can you state your full name 12 for me for the record please? 13 THE WITNESS: Alan Keith Rose. 14 JUDGE MUHL: Is your name R-o-s-e? 15 THE WITNESS: Correct. 16 JUDGE MUHL: Okay. And can you tell me 17 from where you're testifying here today? 18 THE WITNESS: Our corporate office in 19 Goshen, Indiana. 20 JUDGE MUHL: Who else in in the room there 21 with you? 22 THE WITNESS: Mr. Stuart Buttrick, Robert 23 Konopinski, and a paralegal from Stuart Buttrick's 24 firm. 25 JUDGE MUHL: Okay. When you testify here</p>
<p style="text-align: right;">Page 1501</p> <p>1 the exhibits we're going to use. So I don't know Amy 2 or Your Honor or Rob, if you all need any time to 3 print those out. We're certainly, with the Judge's 4 indulgence, happy to let that happen. 5 JUDGE MUHL: You're going to send them 6 around via e-mail now. 7 MR. BUTTRICK: Correct. Kristi is sending 8 them right now. 9 MS. BACHELDER: Do you have Andrea LaLonde 10 on that e-mail? 11 JUDGE MUHL: Mr. Bachelder, are you going 12 to print them out. 13 MS. BACHELDER: I'll print them out as 14 well, sir. 15 JUDGE MUHL: Let's go off the record and 16 take care of that. 17 (Whereupon, a short break was taken.) 18 JUDGE MUHL: We're back on. I'm going to 19 clarify my earlier clarification, which apparently 20 wasn't clear enough. C185 is being moved into the 21 record and it's not in the record right now, but we 22 have that taken care of in the transcript and the only 23 thing that was missing was it hasn't been entered into 24 the record. I'm entering it into evidence now. And 25 we're ready to proceed with the witness.</p>	<p style="text-align: right;">Page 1503</p> <p>1 today since we're in this video setup it's important 2 to remember a couple things. Even more important that 3 it is in an in-person hearing, try not to talk over 4 each other when you're being questioned and answering. 5 Let the question finish and then answer and then move 6 on from there. If there is an objection make sure you 7 don't answer the question until I have an opportunity 8 to rule on it. If you have any -- well, you're not -- 9 if any of you in this group have a technological 10 issue, let me know and we'll get that taken care of 11 and resolved so we can hear your testimony. There is 12 no other communication allowed other than the 13 questioning from your counsel during your testimony. 14 And only documents you should be looking at will be 15 exhibits that are put in the front of you as you 16 testified. If you need a break at any point during 17 your testimony you let me know that. And do you have 18 any questions for me, sir? 19 THE WITNESS: No, sir -- Your Honor. 20 MR. MUHL: Okay. Mr. Buttrick, you can 21 proceed. 22 EXAMINATION 23 QUESTIONS BY MR. BUTTRICK: 24 Q. Thank you, Your Honor. Just for purpose of 25 clarity and so everyone knows what I'm doing. I do</p>

<p style="text-align: right;">Page 1504</p> <p>1 have hard copy of our exhibits here with me. When I'm 2 questioning Mr. Rose about them, I'll be handing him 3 the hard copies of those exhibits. Okay. So Mr. 4 Rose, if you can please state your name? 5 A. Alan Keith Rose. 6 Q. Where are you employed? 7 A. Rieth-Riley Construction. 8 Q. What is your job title at Rieth-Riley? 9 A. President and CEO. 10 Q. How long -- 11 MS. BACHELDER: Stuart, I'm having 12 technical difficulty here. Sorry. 13 Q. (By Mr. Buttrick) No problem at all, Amy. 14 Mr. Rose, you said your job title is president and 15 CEO? 16 A. Correct. 17 Q. How long have you served as president and 18 CEO? 19 A. I became president in 2009 and CEO in 2011. 20 Q. Where were you employed before that? 21 A. Kinsley Construction, York, Pennsylvania. 22 Q. What does Rieth-Riley do? 23 A. We are a heavy highway contractor doing 24 asphalt paving, dirt, pipe, bridges and concrete work. 25 Q. And where is Rieth-Riley's principal</p>	<p style="text-align: right;">Page 1506</p> <p>1 the construction season? 2 A. Depending on the year, anywhere from 130 to 3 170. 4 Q. And approximately how many operating 5 engineers does Rieth-Riley employee during the winter 6 season in Michigan? 7 A. Between 30 and 40 working on plant 8 maintenance. 9 Q. Who oversees Rieth-Riley's Michigan 10 operation? 11 A. Chad Loney who is regional vice-president. 12 Q. Who does Mr. Loney report to? 13 A. He reports to me. 14 Q. Are you familiar with Operating Engineers 15 Local 324? 16 A. Yes, I am. 17 Q. What is it? 18 A. That is Operating Engineers Local union in 19 Michigan that represents our operating engineer 20 employees. 21 Q. Are there any other labor unions that 22 represent Michigan or represent Rieth-Riley Michigan 23 operating engineers? 24 A. No. 25 Q. How long has 324 represent Rieth-Riley</p>
<p style="text-align: right;">Page 1505</p> <p>1 office? 2 A. Goshen, Indiana. 3 Q. Does Rieth-Riley operate regional offices 4 as well? 5 A. We do. We operate regional offices in both 6 Michigan and Indiana plus or minus nine offices 7 depending how you count them. 8 Q. Does Rieth-Riley operate asphalt plants? 9 A. We have 27 asphalt plants spread across 10 both states. 11 Q. How long has Rieth-Riley been operating in 12 Michigan? 13 A. For decades as far as I understand, early 14 1900s. 15 Q. Does Rieth-Riley generally employ the same 16 number of operating engineers in Michigan throughout 17 the entire year? 18 A. No. We are a seasonal contractor and we 19 start work in early April in the southern part of the 20 state, mid-May in the northern part of the state, and 21 operations usually wrap up in mid to the end November. 22 Q. When is construction season in Michigan? 23 A. Roughly April to November. 24 Q. And approximately how many operating 25 engineers does Rieth-Riley employee in Michigan during</p>	<p style="text-align: right;">Page 1507</p> <p>1 operating engineers in Michigan? 2 A. As far as I know, that's all the way back 3 to the beginning when we started work in Michigan. 4 Q. So I think that would be early 1900s? 5 A. Early 1900s. 6 Q. Now, prior to the present dispute, which is 7 the subject of this National Labor Relation Board 8 proceeding, are you aware of any problems with Local 9 324? 10 A. No. 11 Q. Are you familiar with the concepts of 12 sections 8(f) and 9(a) of the National Labor Relations 13 Act? 14 A. Yes. 15 Q. What is your understanding what section 16 9(a) means? 17 A. 9(a) relationship means both parties 18 recognize one another and their relationship continues 19 on after a contract, a current labor contract expires, 20 they have obligation to continue. 21 Q. What is your understanding of what section 22 8(f) means? 23 A. 8(f) agreement, once the current labor 24 agreement expires, neither party has an obligation to 25 continue with the relationship.</p>

<p style="text-align: right;">Page 1508</p> <p>1 Q. So what kind of relationship does 2 Rieth-Riley have with Local 324? 3 A. We have a 9(a) relationship. 4 Q. Approximately how long has Rieth-Riley had 5 that 9(a) relationship? 6 A. I believe that was signed in 1993. 7 Q. Okay. So if I can turn everyone's 8 attention to General Counsel Exhibit 3. Let me know, 9 everybody, when you found it? 10 MR. DRZYZGA: I'm good. Thank you. 11 MS. BACHELDER: Got it. 12 Q. (By Mr. Buttrick) Great. Thank you. Mr. 13 Rose, do you have General Counsel Exhibit 3 in front 14 of you? 15 A. I do. 16 Q. What is General Counsel Exhibit 3? 17 A. This is cover letter from Operating 18 Engineers Local 324 dated November 11, 1993 addressed 19 to Rieth-Riley stating that enclosed is a copy of the 20 recognition agreement, which is the 9(a) agreement, 21 that was signed on November 2nd, 1993, by James Eaton, 22 our representative, and signed by several 23 representatives from Local 324. 24 Q. That's the 9(a) recognition agreement then? 25 A. Yes.</p>	<p style="text-align: right;">Page 1510</p> <p>1 A. That is an industry trade association that 2 represents contractors in highway and underground and 3 distribution markets. 4 Q. Do you know approximately how many 5 contractors it represents? 6 A. Several hundred. 7 Q. Have you had any personal involvement in 8 MITA? 9 A. I was involved with the original formation 10 of the group. It was a joining of the old standing 11 Michigan Roadbuilders Association and Association of 12 Underground Contractors. Those two associations merge 13 to create MITA in 2005. I was one of the original 14 board members, continued with the board through 2015, 15 where I was immediate past president in that year. 16 Q. Was Rieth-Riley a member of MITA then when 17 the most recent agreement was entered into? 18 A. Yes. 19 Q. Was MITA bargaining on behalf of 20 Rieth-Riley when this road agreement was entered into? 21 A. Yes. 22 Q. If we can look at General Counsel Exhibit 23 48? 24 MR. DRZYZGA: Are you sure it's not 44? 25 MR. BUTTRICK: No, it's 48.</p>
<p style="text-align: right;">Page 1509</p> <p>1 Q. So is Rieth-Riley signatory to or has it 2 been a signatory to any collective bargaining 3 agreement with Local 324? 4 A. Yes. 5 Q. Everyone should look at General Counsel 2? 6 MR. DRZYZGA: I got it. I'm good. Thank 7 you. 8 MS. BACHELDER: Me, too. 9 Q. (By Mr. Buttrick) Thank you. Mr. Rose, do 10 you have General Counsel 2 in front of you? 11 A. I do. 12 Q. What is General Counsel 2? 13 A. This is a copy of the most recent agreement 14 between MITA, Michigan Infrastructure Transportation 15 Association, and Operating Engineers Local 324, which 16 we are still operating under. 17 Q. When did this agreement take effect? 18 A. June 1st, 2013. 19 Q. So you say you're still operating under it, 20 what do you mean by that? 21 A. By virtue of the 9(a) agreement this 22 contract still continues for both parties. 23 Q. Okay. And so you reference the Michigan 24 Infrastructure and Transportation Association, what is 25 that?</p>	<p style="text-align: right;">Page 1511</p> <p>1 MR. DRZYZGA: I don't have a 48. Oh, 2 sorry. Okay. It's at the bottom. Sorry. I got it. 3 MS. BACHELDER: I got it. 4 MR. BUTTRICK: Did you say, Amy, you got 5 it, too? 6 MS. BACHELDER: Yes. 7 Q. (By Mr. Buttrick) Keith, are you looking 8 at General Counsel Exhibit 48? 9 A. Yes. 10 Q. What is General Counsel Exhibit 48? 11 A. This is power of attorney assignment from 12 our company to MITA dated February 25, 2008, signed by 13 our then General Counsel Francis Canter. 14 Q. Has MITA historically bargained on behalf 15 of Rieth-Riley in Michigan? 16 A. Yes. 17 Q. Returning to the road agreement itself, 18 which is General Counsel 2, what type of work does the 19 road agreement apply to? 20 A. This is for highway work, road construction 21 work. 22 Q. Okay. And you reference that you are still 23 operating under the expired terms of this road 24 agreement? 25 A. Yes.</p>

<p style="text-align: right;">Page 1512</p> <p>1 Q. Is Rieth-Riley currently engaged in</p> <p>2 bargaining with Local 324 for a new agreement?</p> <p>3 A. Yes.</p> <p>4 Q. To date, have you bargained with Local 324</p> <p>5 for a successor CBA on a single or multi employer</p> <p>6 basis?</p> <p>7 A. On single basis.</p> <p>8 Q. Approximately how many bargaining meetings</p> <p>9 have you had?</p> <p>10 A. Ten.</p> <p>11 Q. Have you had any tentative agreements?</p> <p>12 A. Yes.</p> <p>13 Q. Approximately how many?</p> <p>14 A. Plus or minus ten.</p> <p>15 Q. Is MITA representing Rieth-Riley now in</p> <p>16 that bargaining?</p> <p>17 A. No.</p> <p>18 Q. When did the single employer bargaining</p> <p>19 with the union start approximately?</p> <p>20 A. November of '18. I believe the last one</p> <p>21 was in September of '19.</p> <p>22 Q. Looking back at General Counsel Exhibit 48,</p> <p>23 which is the power of attorney, what is your</p> <p>24 understanding about what the power of attorney</p> <p>25 authorized MITA to do?</p>	<p style="text-align: right;">Page 1514</p> <p>1 A. Plus or minus five years.</p> <p>2 Q. Have you ever met with Mr. Stockwell in</p> <p>3 person?</p> <p>4 A. Yes.</p> <p>5 Q. Did you ever have any meetings with Mr.</p> <p>6 Stockwell in 2016?</p> <p>7 A. Yes. Myself and Mr. Loney, who is our</p> <p>8 regional vice-president in Michigan, met with Mr.</p> <p>9 Stockwell and Mr. Heath Salisbury at our office in</p> <p>10 Lansing, Michigan at their request.</p> <p>11 Q. Approximately when was that?</p> <p>12 A. I believe that was May of '16.</p> <p>13 Q. What was purpose of those meetings?</p> <p>14 A. They had become aware that we had concerns</p> <p>15 with two particular clauses that we knew that they</p> <p>16 were going to introduce in negotiations. Specifically</p> <p>17 a hiring hall clause and mandatory subcontracting</p> <p>18 clause, and they wanted to come in and discuss those</p> <p>19 with us.</p> <p>20 Q. Did you discuss Rieth-Riley's position on</p> <p>21 those clauses in that meeting?</p> <p>22 A. We did.</p> <p>23 Q. What did you say?</p> <p>24 A. We explained with the hiring hall that we</p> <p>25 had long-held practice of hiring and training our own</p>
<p style="text-align: right;">Page 1513</p> <p>1 A. Negotiate on our behalf for successor</p> <p>2 agreement.</p> <p>3 Q. Are you familiar with the term called the</p> <p>4 labor relations division?</p> <p>5 A. Yes.</p> <p>6 Q. What is that?</p> <p>7 A. That is the individuals, the individual</p> <p>8 members of the association who are designated to be</p> <p>9 the bargaining representatives along with Mr. Nystrom</p> <p>10 from the association.</p> <p>11 Q. Was Rieth-Riley a member of -- is that</p> <p>12 called LRD?</p> <p>13 A. Correct.</p> <p>14 Q. Was Rieth-Riley a member of LRD during the</p> <p>15 term of the road agreement?</p> <p>16 A. Yes.</p> <p>17 Q. Which representative from Rieth-Riley</p> <p>18 represented it on the LRD?</p> <p>19 A. Myself.</p> <p>20 Q. Do you know an individual named Doug</p> <p>21 Stockwell?</p> <p>22 A. Yes.</p> <p>23 Q. Who is he?</p> <p>24 A. He is business manager for Local 324.</p> <p>25 Q. How long have you known Mr. Stockwell?</p>	<p style="text-align: right;">Page 1515</p> <p>1 individuals so we've had virtually no benefit from</p> <p>2 such a clause, did not see a need for our markets and</p> <p>3 for our business. The subcontracting clause we tried</p> <p>4 to explain to Mr. Stockwell and Mr. Salisbury that</p> <p>5 outside of metro Detroit and surrounding counties the</p> <p>6 bulk of the state in Michigan is a nonunion state and</p> <p>7 forcing someone who works in that part of the state to</p> <p>8 only hire union subcontractors was a physical</p> <p>9 impossibility. And we went through the slim number of</p> <p>10 union subcontractors that exist in that market.</p> <p>11 Thereby, that would relegate us to being no longer a</p> <p>12 prime contractor, but just a subcontractor greatly</p> <p>13 reducing our capability to secure work, which in turn</p> <p>14 would reduce our number of man hours for their</p> <p>15 operating engineers that they represent and further</p> <p>16 exacerbating that the nonunion primes and subs would</p> <p>17 not want to do business with us because we would not</p> <p>18 do business with them further reducing our ability to</p> <p>19 secure work and man hours.</p> <p>20 Q. After this May of 2016 meeting, to your</p> <p>21 knowledge and recollection, did MITA via the LRD try</p> <p>22 to set up additional meetings with Local 324?</p> <p>23 A. Yes.</p> <p>24 Q. If you can turn your attention to Company</p> <p>25 Exhibit 12.</p>

<p style="text-align: right;">Page 1516</p> <p>1 MR. DRZYZGA: I got it.</p> <p>2 MS. BACHELDER: Me, too.</p> <p>3 Q. (By Mr. Buttrick) Thank you, everybody.</p> <p>4 Keith, do you have Company Exhibit 12 in front of you?</p> <p>5 A. Yes.</p> <p>6 Q. What is Company Exhibit 12?</p> <p>7 A. This is e-mail from Mark Johnston to the</p> <p>8 members of the LRD along with several other</p> <p>9 contractors with a copy to Mike Nystrom from MITA</p> <p>10 where he is informing everyone that he reached out to</p> <p>11 Mr. Stockwell and suggested a date to sit down and</p> <p>12 discuss concerns with him about the new contract and</p> <p>13 asking for us to be available on that date.</p> <p>14 Q. Who is Mark Johnston?</p> <p>15 A. He is a member of LRD and was representing</p> <p>16 the group at that time.</p> <p>17 Q. Do you know what company Mr. Johnston works</p> <p>18 with?</p> <p>19 A. Ajax Paving.</p> <p>20 Q. Did Mr. Johnston have any type of formal</p> <p>21 role with the LRD with regard to communication with</p> <p>22 Local 324?</p> <p>23 A. At that time he was leading communication</p> <p>24 with Local 324 in as much as Mr. Stockwell refused to</p> <p>25 communicate with Mr. Nystrom.</p>	<p style="text-align: right;">Page 1518</p> <p>1 would not accept fringe payments for members that had</p> <p>2 power of attorney with MITA. So we tried to rescind</p> <p>3 our power of attorney, and that still did not create a</p> <p>4 situation where 324 would come to the table.</p> <p>5 Q. Turning back to Company Exhibit 12, which</p> <p>6 is that Johnston e-mail, were you cc'd on this e-mail?</p> <p>7 A. Yes.</p> <p>8 Q. And you reference Mr. Nystrom. Who is Mr.</p> <p>9 Nystrom?</p> <p>10 A. He is lead representative from MITA.</p> <p>11 Q. And who are the other individuals on this</p> <p>12 e-mail that the "to" line reflects?</p> <p>13 A. It reflects other members of the LRD and</p> <p>14 several other large contractors.</p> <p>15 Q. So looking at the e-mail, Mr. Johnston says</p> <p>16 that he is trying to set up a meeting with Mr.</p> <p>17 Stockwell to discuss, and I quote, the game plan going</p> <p>18 forward. Do you see that on there about halfway</p> <p>19 through the first paragraph?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Does that proposed meeting occur?</p> <p>22 A. It did.</p> <p>23 Q. When was that?</p> <p>24 A. On June 13th.</p> <p>25 Q. Of what year?</p>
<p style="text-align: right;">Page 1517</p> <p>1 Q. In that role with Mr. Johnston acting a</p> <p>2 spokesperson for Rieth-Riley?</p> <p>3 A. Yes.</p> <p>4 MS. BACHELDER: Objection; leading.</p> <p>5 JUDGE MUHL: Overruled.</p> <p>6 Q. (By Mr. Buttrick) How long did Mr.</p> <p>7 Johnston act in the spokesperson capacity?</p> <p>8 A. From this point until the whole situation</p> <p>9 broke down to where there was completely no</p> <p>10 coordinated bargaining whatsoever.</p> <p>11 Q. Approximately when was that?</p> <p>12 A. Up until the point of the strike.</p> <p>13 Q. And so up until the point of the strike was</p> <p>14 Rieth-Riley engaged in coordinated bargaining or multi</p> <p>15 employer bargaining with the union?</p> <p>16 A. Multi employer.</p> <p>17 Q. Prior to that circumstances in the fall of</p> <p>18 2018, have contractors tried to engage in any other</p> <p>19 type of bargaining with Local 324?</p> <p>20 A. No.</p> <p>21 Q. Prior to that circumstance, had contractors</p> <p>22 withdrawn their powers of attorney from MITA with</p> <p>23 regard to the bargaining relationship?</p> <p>24 A. We had tried to do that because Mr.</p> <p>25 Stockwell had moved the goal post saying that they</p>	<p style="text-align: right;">Page 1519</p> <p>1 A. 2016.</p> <p>2 Q. Were you in attendance?</p> <p>3 A. I was.</p> <p>4 Q. Who else was in attendance?</p> <p>5 A. The members on this e-mail along with Mr.</p> <p>6 Stockwell and several other representatives from Local</p> <p>7 324. I believe Mr. Salisbury, Mr. Dombrow, and one</p> <p>8 other individual.</p> <p>9 Q. Was Mr. Nystrom in attendance?</p> <p>10 A. No.</p> <p>11 Q. Do you know why he was not in attendance?</p> <p>12 A. At this point in time Mr. Stockwell refused</p> <p>13 to interact with Mr. Nystrom. And that stemmed from a</p> <p>14 number of grievances and issues that were filed by 324</p> <p>15 against a number of MITA contractors prior hereto.</p> <p>16 And Mr. Nystrom was representing those individuals in</p> <p>17 those grievance hearings. And by and large most of</p> <p>18 those failed.</p> <p>19 MS. BACHELDER: Objection; foundation and</p> <p>20 hearsay.</p> <p>21 MR. BUTTRICK: We waived foundation he said</p> <p>22 he was in the meeting and he can testify about --</p> <p>23 we're not using it for truth of the matter asserted,</p> <p>24 but just for his own reaction to what he recalls</p> <p>25 occurred in that meeting.</p>

<p style="text-align: right;">Page 1520</p> <p>1 MR. DRZYZGA: He hasn't laid anything to 2 say he was involved in the grievance meetings or 3 dispositions regarding those grievances between 4 Nystrom and Stockwell. 5 JUDGE MUHL: The objection is sustained. 6 Let's narrow it down. If any of that was -- if any of 7 what Mr. Rose just testified to was told by Mr. 8 Stockwell, then that's proper testimony. So let's get 9 into that. 10 Q. (By Mr. Buttrick) Mr. Rose, was any of 11 that at that time a dispute between Local 324 and 12 MITA, was that discussion ever relayed to you by 13 anyone? 14 A. By Mike Nystrom himself. 15 Q. What did Mr. Nystrom tell you? 16 MS. BACHELDER: Objection; hearsay. 17 MR. BUTTRICK: We're not using it for truth 18 of the matter asserted, but it goes to Mr. Rose's 19 impression and understanding of what the circumstance 20 was. We're not using it for the truth of the matter, 21 sir. 22 MS. BACHELDER: Then it's not relevant. 23 JUDGE MUHL: He can answer it with that 24 limitation. Overruled. 25 Q. (By Mr. Buttrick) Please answer.</p>	<p style="text-align: right;">Page 1522</p> <p>1 correct? 2 A. Correct. 3 Q. If you can go -- start at beginning of the 4 e-mail chain which, I believe, starts on Page 2, I 5 think. Do you see that? 6 A. I do. 7 Q. Okay. So is this e-mail from Mike Nystrom 8 dated June 16, 2016? 9 A. Correct. 10 Q. Okay. So what does this document and 11 series of e-mails reflect? 12 A. Mr. Nystrom had forwarded to the group on 13 this e-mail a copy of the hiring hall clause that 14 Local 324 was proposing to our association and several 15 others, which is indicated on Page 8 of the signature 16 page. And then my subsequent e-mail back with my 17 concerns about the hiring hall; that if it were to go 18 forward there would need to be some changes. Then an 19 e-mail from Mr. Johnston to myself agreeing with most 20 of my points and asking me to take a stab at a red 21 line draft revision, which I did. And red line 22 changes are on this draft of the hiring hall proposal. 23 Q. And so you testified about two meetings 24 that you were involved in that also involved Local 25 324. During either of these meetings was the topic of</p>
<p style="text-align: right;">Page 1521</p> <p>1 A. May I hear the question again? 2 (Whereupon, the last question was read 3 back.) 4 THE WITNESS: Mr. Nystrom indicated to me 5 Mr. Stockwell was very aggravated by the fact that Mr. 6 Nystrom and Local 324 along with counsel Don Sharg has 7 opposed them in these grievances, had been very 8 successful in knocking those grievances down. And Mr. 9 Stockwell was taking that personally. 10 Q. (By Mr. Buttrick) Turn back to the meeting 11 that you testified about in June of 2016. Where did 12 that meeting take place? 13 A. At Ajax Paving's office in Troy, Michigan. 14 Q. What was discussed at that meeting? 15 A. Several of the larger issues that were of 16 concern to the industry. One, obviously, a successor 17 contract being done timely, the hiring hall clause and 18 subcontracting clause. 19 Q. If everyone can look at Company Exhibit 15. 20 MS. BACHELDER: I got it. 21 MR. DRZYZGA: I have it. 22 Q. (By Mr. Buttrick) Thank you. Mr. Rose, do 23 you have Company Exhibit 15 in front of you? 24 A. Yes. 25 Q. If you can look -- it's an e-mail chain;</p>	<p style="text-align: right;">Page 1523</p> <p>1 multi employer bargaining ever discussed? 2 A. No. 3 Q. During either of these meetings did Local 4 324 indicate it was withdrawing from multi employer 5 bargaining? 6 A. No. 7 Q. During either of these meetings did it 8 indicate it was withdrawing from bargaining with MITA? 9 A. No. 10 Q. If we can look at Company Exhibit 21. 11 MR. DRZYZGA: Got it. 12 MS. BACHELDER: Got it. 13 Q. (By Mr. Buttrick) Mr. Rose, do you have 14 Company Exhibit 21 in front of you? 15 A. Yes. 16 Q. Halfway down it looks to be an e-mail from 17 Doug Stockwell to a group of people. Do you see that? 18 A. Yes. 19 Q. Are you copied on that e-mail? 20 A. I am. 21 Q. What is your understanding about what this 22 e-mail reflects? 23 A. This is an e-mail to the same group of 24 individuals that met at Ajax Paving office at the 25 prior meeting that we discussed. And Mr. Stockwell is</p>

<p style="text-align: right;">Page 1524</p> <p>1 cancelling the upcoming sit-down with the contractors 2 due in his words, due to current arbitration with MITA 3 and other court dealings. 4 Q. And so do you know what Mr. Stockwell is 5 referring to when he said "current arbitration with 6 MITA"? 7 A. This goes back to the grievance we 8 discussed earlier wherein MITA was challenging 324's 9 grievances. 10 Q. And do you know what Mr. Stockwell is 11 referencing when he talks about other court dealings? 12 A. Not specifically. 13 Q. Did you understand from this e-mail that -- 14 whether Mr. Stockwell was withdrawing from multi 15 employer bargaining? 16 A. No. 17 Q. Are you familiar with the term called 18 "re-opener letter"? 19 A. Yes, I am. 20 Q. What's your understanding of a re-opener 21 letter? 22 A. Prior to the end of a current labor 23 agreement, both parties typically within an allotted 24 time frame send a re-opener letter to one another 25 indicating that they wish to bargain for successor</p>	<p style="text-align: right;">Page 1526</p> <p>1 Q. If everyone can look at General Counsel 7. 2 MR. DRZYZGA: I have it. Thank you. 3 MS. BACHELDER: Me, too. 4 Q. (By Mr. Buttrick) Keith, do you have 5 General Counsel 7 in front of you? 6 A. I do. 7 Q. What is General Counsel 7? 8 A. This is February 21, 2018 letter from Mr. 9 Stockwell to Mr. Nystrom indicating that the union 10 desires to make changes to the current collective 11 bargaining agreement now in effect for wages and other 12 items, and that for the purpose of negotiating new 13 contract we reserve the right during the course of 14 negotiation to introduce additional changes, another 15 typical re-opener letter. 16 Q. Did this letter make you believe that Local 17 324 did not intend to engage in multi employer 18 bargaining? 19 A. No. 20 MS. BACHELDER: Objection. 21 JUDGE MUHL: Go ahead. 22 MS. BACHELDER: I object that his belief is 23 irrelevant as to whether or not the Union was 24 withdrawing from multi employer bargaining. 25 JUDGE MUHL: I understand. I mean you have</p>
<p style="text-align: right;">Page 1525</p> <p>1 agreement. 2 Q. Do you know whether MITA sent a re-opener 3 letter to Local 324 in 2018? 4 A. They did. 5 Q. If everyone can look at General Counsel 4. 6 MR. DRZYZGA: Did you say 24? 7 MR. BUTTRICK: No, 4. 8 MR. DRZYZGA: I apologize. I misheard you. 9 Thank you. I have it. 10 MS. BACHELDER: Me, too. 11 Q. (By Mr. Buttrick) Okay. Thank you, 12 everybody. Keith, do you have General Counsel 4 in 13 front of you? 14 A. Yes. 15 Q. What is General Counsel 4? 16 A. This is February 19, 2018 letter from Mr. 17 Nystrom to Mr. Stockwell which is a typical re-opener 18 letter saying that we look forward to successful 19 negotiation for a new contract. This is consistent 20 with every re-opener letter that I've been associated 21 with with multiple locals and multiple drafts over 22 several decades. 23 Q. To your knowledge, did Local 324 send a 24 re-opener letter to MITA? 25 A. They did.</p>	<p style="text-align: right;">Page 1527</p> <p>1 answered the question, Mr. Rose, but I will -- his 2 impression of what the letter meant is not 3 controlling, I'll just note that for the record. So 4 the objection is overruled. 5 MS. BACHELDER: I cannot hear the witness 6 answers, Your Honor. Perhaps I was talking over him. 7 Q. (By Mr. Buttrick) To your knowledge, 8 Keith, did Mr. Stockwell ever rescind that re-opener 9 letter that was sent to MITA? 10 A. No. 11 Q. To your knowledge, did Mr. Stockwell ever 12 inform you that the letter was sent in error? 13 A. No; not that it was sent in error. 14 Q. Did anyone else from Local 324 ever inform 15 you that the Union re-opener letter was sent in error? 16 A. There was some claim that a clerk had 17 misappropriately sent it from their office, but 18 accompanying this was also the notice from the Federal 19 Mediation Service on behalf of the Union stating that 20 it was re-opener. 21 Q. So you reference a clerk, when were you 22 aware that there might have been a mistake with a 23 clerk? 24 A. Months and months later. 25 Q. What year?</p>

<p style="text-align: right;">Page 1528</p> <p>1 A. It would have been '18, I believe.</p> <p>2 Q. Okay.</p> <p>3 A. Late '18.</p> <p>4 Q. How did you learn that?</p> <p>5 A. From Mr. Nystrom.</p> <p>6 Q. What did he say?</p> <p>7 A. That Mr. Stockwell was claiming that it</p> <p>8 wasn't his fault this letter went out. He was blaming</p> <p>9 a clerk that it went out.</p> <p>10 Q. And did that happen before or after the</p> <p>11 labor dispute with Ajax?</p> <p>12 A. After.</p> <p>13 Q. So based upon your understanding when you</p> <p>14 got he re-opener letter or when MITA received the</p> <p>15 re-opener letter from Local 324, what was your</p> <p>16 understanding as to the Union's plans for bargaining?</p> <p>17 A. That it would be business as usual. That</p> <p>18 we would negotiate a successor agreement as we had</p> <p>19 done in the past with MITA agreements.</p> <p>20 Q. If everyone can look at General Counsel</p> <p>21 Exhibit 6.</p> <p>22 MR. DRZYZGA: I have it. Thank you.</p> <p>23 MS. BACHELDER: I do, too.</p> <p>24 Q. (By Mr. Buttrick) Mr. Rose, do you have</p> <p>25 General Counsel 6 in front of you?</p>	<p style="text-align: right;">Page 1530</p> <p>1 Q. Who was that?</p> <p>2 A. Mr. Nystrom did.</p> <p>3 Q. If everyone can look at Company Exhibit 27.</p> <p>4 MS. BACHELDER: I got it.</p> <p>5 MR. DRZYZGA: I have it. Thank you.</p> <p>6 Q. (By Mr. Buttrick) Mr. Rose, do you have</p> <p>7 Company Exhibit 27 in front of you?</p> <p>8 A. Yes.</p> <p>9 Q. What is Company Exhibit 27?</p> <p>10 A. This is April 11, 2018 e-mail from Mr.</p> <p>11 Nystrom to Mr. Stockwell with a copy to LRD members.</p> <p>12 Q. And were you copied on this e-mail?</p> <p>13 A. I was.</p> <p>14 Q. Okay.</p> <p>15 A. And it is requesting dates and suggesting</p> <p>16 dates for negotiations.</p> <p>17 Q. Now, to your knowledge, did Local 324</p> <p>18 respond to this April 11, 2018 e-mail?</p> <p>19 A. No.</p> <p>20 Q. If everybody could pull up Company Exhibit</p> <p>21 28.</p> <p>22 MS. BACHELDER: Got it.</p> <p>23 MR. DRZYZGA: I have it. Thank you.</p> <p>24 Q. (By Mr. Buttrick) Mr. Rose, do you have</p> <p>25 Company Exhibit 28 in front of you?</p>
<p style="text-align: right;">Page 1529</p> <p>1 A. Yes.</p> <p>2 Q. What is General Counsel 6?</p> <p>3 A. This is a standard form from Federal</p> <p>4 Mediation and Conciliation Service that is typically</p> <p>5 sent out when two parties of the bargaining agreement</p> <p>6 are entering into negotiation. This is dated June</p> <p>7 3rd, 2016 at the top. And it was submitted notice</p> <p>8 type there is check mark by re-opener. And on line</p> <p>9 three this notice is filed on behalf of the Union box</p> <p>10 is checked.</p> <p>11 Q. And this was sent to Rieth-Riley?</p> <p>12 A. Yes.</p> <p>13 Q. Now, to your knowledge, did Mr. Stockwell</p> <p>14 ever rescind this FMCS notice to Rieth-Riley?</p> <p>15 A. No.</p> <p>16 Q. Did Mr. Stockwell ever inform you that this</p> <p>17 FMCS notice was sent in error?</p> <p>18 A. No.</p> <p>19 Q. Did anyone from Local 324 ever inform you</p> <p>20 that FMCS notice was sent to Rieth-Riley in error?</p> <p>21 A. No.</p> <p>22 Q. So after MITA sent Local 324 its re-opener</p> <p>23 letter, to your knowledge did anyone from MITA reach</p> <p>24 out to Local 324 to request bargaining?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1531</p> <p>1 A. Yes.</p> <p>2 Q. What is Company Exhibit 28?</p> <p>3 A. This is May 1st, 2018 e-mail from Mark</p> <p>4 Johnston to Mr. Stockwell with a copy to the members</p> <p>5 of the LRD and Mr. Nystrom.</p> <p>6 Q. Were you copied on this e-mail?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. The e-mail references something and</p> <p>9 I'll quote "MITA 2018 Negotiating Committee", do you</p> <p>10 see that?</p> <p>11 A. Yes.</p> <p>12 Q. What is that?</p> <p>13 A. That is the LRD.</p> <p>14 Q. If everyone can look at Company Exhibit 29.</p> <p>15 MR. DRZYZGA: I have it. Thank you.</p> <p>16 MS. BACHELDER: So do I.</p> <p>17 Q. (By Mr. Buttrick) Mr. Rose, do you have</p> <p>18 Company Exhibit 29 in front of you?</p> <p>19 A. Yes.</p> <p>20 Q. So looking at Company 29 it looks like it's</p> <p>21 a series of communication; correct?</p> <p>22 A. Correct.</p> <p>23 Q. What is your understanding of what Company</p> <p>24 29 is?</p> <p>25 A. This is a letter and also e-mail dated May</p>

<p style="text-align: right;">Page 1532</p> <p>1 2nd, 2018 from Mr. Stockwell. The letter is to Mr. 2 Nystrom. The e-mail is to Mark Johnston and the rest 3 of the LRD members and Mr. Nystrom, wherein Mr. 4 Stockwell says that he is terminating the agreement 5 and there is a clarifier in that he used the word 6 except instead of accept. And he sent another 7 clarifier saying there was a clerical error. There 8 was an e-r-a when it should have been error is what he 9 intended to say.</p> <p>10 Q. And you reference it's your understanding 11 that Mr. Stockwell was terminating the agreement. Did 12 you understand these communications to have any other 13 impact or attempted impact?</p> <p>14 A. That he was withdrawing from multi employer 15 bargaining.</p> <p>16 Q. And before receiving these May 2nd 17 communications from Mr. Stockwell, had Mr. Stockwell 18 or anyone from Local 324 ever told you that Local 324 19 is withdrawing from multi employer bargaining?</p> <p>20 A. No.</p> <p>21 Q. If I can have everyone can look at Company 22 Exhibit 30.</p> <p>23 MR. DRZYZGA: I have it. Thank you.</p> <p>24 MS. BACHELDER: Me, too.</p> <p>25 Q. (By Mr. Buttrick) Mr. Rose, do you have</p>	<p style="text-align: right;">Page 1534</p> <p>1 whether or not the communication was timely or 2 untimely. That's one of the key legal issues here.</p> <p>3 JUDGE MUHL: Right. I'm going to overrule 4 the objection as I did before. He can answer in terms 5 of what he thought it was. It's not controlling, but 6 it will to go his state of mind. So you can answer 7 the question, sir.</p> <p>8 THE WITNESS: Yes, I believed it was 9 untimely, consistent with many contract labor 10 agreements I've been associated with. There is 11 typically a 60-day window in which you must notify the 12 other party that you are going to withdraw from a 13 future agreement. And this indication by Mr. 14 Stockwell on May 2nd was well short of the 60-day 15 requirement.</p> <p>16 Q. To your knowledge, Mr. Rose, did Mr. 17 Stockwell respond to Mr. Johnston's e-mail?</p> <p>18 A. I don't believe so, no.</p> <p>19 Q. If we can look at Company Exhibit 32?</p> <p>20 MR. DRZYZGA: I have it. Thank you.</p> <p>21 MS. BACHELDER: I do, too.</p> <p>22 MR. BUTTRICK: I might have missed it.</p> <p>23 Has everyone found Company Exhibit 32?</p> <p>24 MS. BACHELDER: Yes.</p> <p>25 MR. DRZYZGA: Yes, sir.</p>
<p style="text-align: right;">Page 1533</p> <p>1 Company Exhibit 30 in front of you?</p> <p>2 A. Yes.</p> <p>3 Q. What is Company Exhibit 30?</p> <p>4 A. This is an e-mail from Mark Johnston to Mr. 5 Stockwell dated May 14th, 2018, with a copy to LRD 6 members and Mr. Nystrom.</p> <p>7 Q. Were you copied on this e-mail?</p> <p>8 A. Yes.</p> <p>9 Q. If you look at this e-mail in the last 10 paragraph, I'll direct you to the language Mr. 11 Johnston used. He says, and I quote, "that Local 12 324's current refusal to meet with MITA contractor 13 representatives is neither timely or efficient." Do 14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you view Mr. Stockwell's May 2nd letter 17 as untimely?</p> <p>18 A. Yes.</p> <p>19 MS. BACHELDER: Objection.</p> <p>20 JUDGE MUHL: Go ahead, Ms. Bachelder.</p> <p>21 MS. BACHELDER: Relevance whether or not he 22 viewed it as untimely.</p> <p>23 JUDGE MUHL: Go ahead, Mr. Buttrick.</p> <p>24 MR. BUTTRICK: I was just going to say I 25 think it's completely relevant what Mr. Rose believed</p>	<p style="text-align: right;">Page 1535</p> <p>1 Q. (By Mr. Buttrick) Thank you. Mr. Rose, do 2 you have Company Exhibit 32 in front of you?</p> <p>3 A. Yes.</p> <p>4 Q. What is Company Exhibit 32?</p> <p>5 A. There is a May 18th, 2018 letter from Mr. 6 Nystrom to Mr. Stockwell, again requesting negotiation 7 dates since he had not heard back from the previous 8 request, but also transmitting an initial proposal 9 from MITA to 324 to keep the ball rolling and he 10 accompanied his previous e-mail where he requested 11 negotiation dates.</p> <p>12 Q. Where is the proposal found?</p> <p>13 A. The proposal is the fourth page, it says 14 MITA proposal number one at the top, and the main gist 15 of it is no language changes, five-year deal with only 16 economic changes of \$8 spread over five years; \$2 per 17 year for each of the first three years and \$1 per year 18 on the fourth and fifth year.</p> <p>19 Q. To your knowledge, Mr. Rose, did Mr. 20 Stockwell respond to that proposal?</p> <p>21 A. No.</p> <p>22 Q. If everyone can look at General Counsel 23 Exhibit 16.</p> <p>24 MS. BACHELDER: 60 or 16?</p> <p>25 MR. BUTTRICK: 1-6, Amy.</p>

<p style="text-align: right;">Page 1536</p> <p>1 MS. BACHELDER: Thank you.</p> <p>2 MR. DRZYZGA: I have it. Thank you.</p> <p>3 MS. BACHELDER: I got it.</p> <p>4 Q. (By Mr. Buttrick) Mr. Rose, do you have</p> <p>5 General Counsel Exhibit 16 in front of you?</p> <p>6 A. Yes.</p> <p>7 Q. What is General Counsel Exhibit 16?</p> <p>8 A. This is a June 1st, 2018 letter from Mr.</p> <p>9 Nystrom to Mr. Stockwell wherein he proposes extending</p> <p>10 the MITA agreement that was expiring on that day</p> <p>11 inasmuch as there was not a successor contract in</p> <p>12 place which is, based on my experience, in negotiation</p> <p>13 and prior agreements both with 324 and other locals</p> <p>14 that this is a common practice when the two parties</p> <p>15 have yet to negotiate a successor agreement.</p> <p>16 Q. Looking at the letter, it says in the first</p> <p>17 sentence, it references the suspension of benefits.</p> <p>18 Do you see that there?</p> <p>19 A. Yes.</p> <p>20 Q. What did you understand that to mean?</p> <p>21 A. That it was the intention to make sure that</p> <p>22 the current contract extended and was in place so that</p> <p>23 the fringes and benefits were credited to the</p> <p>24 employees such that they were not put in harm's way</p> <p>25 while a successor agreement was negotiated.</p>	<p style="text-align: right;">Page 1538</p> <p>1 Company 34 in front of you?</p> <p>2 A. Yes.</p> <p>3 Q. What is Company 34?</p> <p>4 A. This is June 6, 2018 letter from Mr.</p> <p>5 Nystrom to Mr. Stockwell following up on the heels of</p> <p>6 the previous letter requesting to extend the then</p> <p>7 current most recent contract, with not hearing back</p> <p>8 from Mr. Stockwell, Mr. Nystrom submitting this</p> <p>9 requesting, proposing that at a minimum continue the</p> <p>10 healthcare benefit while a successor agreement was</p> <p>11 being negotiated such that the employees and families</p> <p>12 would not be put in harm's way and have their</p> <p>13 healthcare impacted.</p> <p>14 Q. Were you part of the decision-making</p> <p>15 process to make this proposal on behalf of MITA?</p> <p>16 A. Yes.</p> <p>17 Q. The road agreement expired May 31, 2018?</p> <p>18 A. Yes.</p> <p>19 Q. Does the month of June fall within the</p> <p>20 construction season in Michigan?</p> <p>21 A. Yes.</p> <p>22 Q. Approximately how many operating engineers</p> <p>23 did Rieth-Riley have working in Michigan at the time</p> <p>24 that the road agreement expired in June of 2018?</p> <p>25 A. Approximately 130.</p>
<p style="text-align: right;">Page 1537</p> <p>1 Q. I'm going to introduce a new exhibit. This</p> <p>2 will be Company Exhibit 191.</p> <p>3 MS. BACHELDER: I have got it.</p> <p>4 MR. DRZYZGA: I have it. Thank you.</p> <p>5 Q. (By Mr. Buttrick) Keith, do you have</p> <p>6 Company Exhibit 191 in front of you?</p> <p>7 A. Yes.</p> <p>8 Q. What is Company Exhibit 191?</p> <p>9 A. A June 1st, 2018 letter from Mr. Stockwell</p> <p>10 to Mr. Nystrom wherein he states that 324 no longer</p> <p>11 will have a relationship with MITA.</p> <p>12 Q. Did you receive a copy of this letter as</p> <p>13 part of your role on the LRD?</p> <p>14 A. Yes.</p> <p>15 Q. I move to admit Company Exhibit 191.</p> <p>16 MS. BACHELDER: No objection.</p> <p>17 MR. DRZYZGA: No objection.</p> <p>18 JUDGE MUHL: Company 191 is received.</p> <p>19 Q. (By Mr. Buttrick) To your knowledge, did</p> <p>20 MITA respond to Mr. Stockwell's June 1, 2018 letter?</p> <p>21 A. Yes.</p> <p>22 Q. If we can look at Company 34.</p> <p>23 MR. DRZYZGA: I have it. Thank you.</p> <p>24 MS. BACHELDER: I got it.</p> <p>25 Q. (By Mr. Buttrick) Mr. Rose, do you have</p>	<p style="text-align: right;">Page 1539</p> <p>1 Q. And did Rieth-Riley operators continue to</p> <p>2 work in Michigan after the expiration of the road</p> <p>3 agreement?</p> <p>4 A. Yes.</p> <p>5 Q. Did the term of the road agreement -- did</p> <p>6 Rieth-Riley make fringe benefit contribution on behalf</p> <p>7 of its employees?</p> <p>8 A. Yes.</p> <p>9 Q. Did Rieth-Riley make fringe benefits</p> <p>10 distributions on behalf of its operating employees</p> <p>11 after the road agreement expired?</p> <p>12 A. Yes.</p> <p>13 Q. Why did it do that?</p> <p>14 A. We have an ongoing obligation as a</p> <p>15 contractor to make those distributions. And we would</p> <p>16 not want to put them in harm's way even if the</p> <p>17 contract was not in place.</p> <p>18 Q. Are you familiar with the concept of Davis</p> <p>19 Bacon?</p> <p>20 A. Yes.</p> <p>21 Q. What is Davis Bacon?</p> <p>22 A. That is payroll and fringe requirement that</p> <p>23 we have to meet for a number of our contractors.</p> <p>24 Therein lies another reason why we have to pay the</p> <p>25 fringes to make sure we're compliant with Davis Bacon.</p>

<p style="text-align: right;">Page 1540</p> <p>1 Q. If everyone can look at -- it was GC2, 2 which is the road agreement? 3 MR. DRZYZGA: I have it. 4 MS. BACHELDER: Me, too. 5 Q. (By Mr. Buttrick) Mr. Rose, do you have 6 GC2 in front of you? 7 A. Yes. 8 Q. If I can direct your attention to Page 28. 9 It will be under a heading that's entitled vacation 10 and holiday fund. And I'll specifically reference you 11 to Part 4C as in cat. 12 MR. DRZYZGA: Is it Page 28 of the document 13 or pdf, sir? 14 MR. BUTTRICK: It's 28 of the document, so 15 it's actually contract Page 28. 16 MR. DRZYZGA: Thank you, sir. 17 MR. BUTTRICK: You're welcome. 18 MR. DRZYZGA: I have it. Thank you. 19 MR. BUTTRICK: Amy, do you have it? 20 MS. BACHELDER: Yes. I already said so. 21 Q. (By Mr. Buttrick) Keith, are you familiar 22 with the requirement of section 4C on this Page 28? 23 A. Yes. 24 Q. What is your understanding of what that 4C 25 requires?</p>	<p style="text-align: right;">Page 1542</p> <p>1 Q. What is General Counsel 20? 2 A. July 16, 2018 letter from Local 324 to our 3 company on behalf of the fringe benefit funds stating 4 that they have voted to not credit our contributions 5 on fringe payments on behalf of our employees because 6 we had power of attorney with MITA. 7 Q. So in your role as a member of the LRD, are 8 you familiar with the Local 324's fund position on 9 accepting or refusing to accept fringe benefit 10 distributions from the contractors to the road 11 agreement? 12 A. Yes. 13 Q. What is your understanding? 14 A. They refused to accept and credit fringes 15 from any road agreement members who had given our of 16 attorney to MITA for purpose of the negotiation. 17 Q. And what's the basis of your knowledge? 18 A. Basis of my knowledge is that I was 19 involved directly with the LRD. 20 Q. And what would have happened to Rieth-Riley 21 if it would have stopped making fringe benefit 22 distributions on behalf of its employees after the 23 expiration of the road agreement? 24 A. We would have been noncompliant with Davis 25 Bacon requirement with our public agency owners</p>
<p style="text-align: right;">Page 1541</p> <p>1 A. That the vacation and holiday fund fringe 2 is to be paid on the employee's check as employee 3 earnings for the purpose of computing payroll 4 withholdings, income tax, Social Security and other 5 required deductions, and then subtracted from the 6 employee's weekly check. 7 Q. So do you understand that section 4C 8 creates a deduction process from the employee's wages? 9 A. Yes. 10 Q. Did Rieth-Riley continue to pay the fringe 11 benefit distribution on behalf of its operators 12 following the requirement of the road agreement? 13 A. Yes. 14 Q. Did Local 324 Vacation and Holiday Fund 15 accept those contributions? 16 A. Initially for a very short period of time 17 they went to holding our check and not crediting them, 18 and then later they wouldn't even hold the check. 19 Q. If everybody can look at General Counsel 20 Exhibit 20. 21 MR. DRZYZGA: I have it. Thank you. 22 MS. BACHELDER: I do, too. 23 Q. (By Mr. Buttrick) Mr. Rose, do you have 24 General Counsel 20 in front of you? 25 A. Yes.</p>	<p style="text-align: right;">Page 1543</p> <p>1 creating a situation where they would find us in 2 default, and we would not be paid for the work we've 3 done. And just as importantly our employees would not 4 be receiving their benefits that they should be 5 receiving. 6 Q. And based upon your understanding, would 7 Rieth-Riley have been in compliance with the terms of 8 the expired contract had it not made those 9 distributions? 10 A. No. 11 Q. So after Rieth-Riley received General 12 Counsel Exhibit 20, which is the letter from the fund, 13 how did Rieth-Riley respond? 14 A. With the goal post being moved once again 15 by 324, we resigned our power of attorney with MITA. 16 Q. If everyone could look at General Counsel 17 Exhibit 22? 18 MR. DRZYZGA: I have it. Thank you. 19 MS. BACHELDER: So do I. 20 Q. (By Mr. Buttrick) Mr. Rose, do you have 21 General Counsel Exhibit 22 in front of you? 22 A. Yes. 23 Q. What is 22? 24 A. This is a July 23, 2018 memorandum from 25 myself and Mr. Loney to our Local 324 employees in</p>

<p style="text-align: right;">Page 1544</p> <p>1 Michigan updating them on the status of the fringe 2 funds not accepting our fringe checks and we were 3 going to be forced to pay that on their check to be 4 compliant with Davis Bacon, and that we were going to 5 proceed with the wage increase pursuant to the 6 original offer that was made to 324 that they did not 7 respond to. 8 Q. Did you help draft this memorandum? 9 A. Yes. 10 Q. So when did Rieth-Riley begin paying 11 vacation fringe amounts on the workers' checks? 12 A. Around this time. And then we made the 13 increase retroactive to June 1st because it's the 14 anniversary date when the increase typically goes into 15 place. 16 Q. When did Rieth-Riley implement the wage 17 increase approximately? 18 A. Shortly after this memorandum went out. 19 Q. Historically how much of a wage increase 20 have Rieth-Riley operating engineers in Michigan 21 typically got in June? 22 A. Plus or minus a dollar per hour. 23 Q. Have Rieth-Riley operating engineers ever 24 received \$2 an hour wage increase in June of a 25 particular year?</p>	<p style="text-align: right;">Page 1546</p> <p>1 A. Yes. 2 Q. I move to admit Company Exhibit 2. 3 MR. DRZYZGA: Objection; what's the 4 relevance? 5 MR. BUTTRICK: Well, it goes to his 6 testimony that the Company has practice of paying over 7 scale which is part of our defenses that there was no 8 illegality in paying \$2 an hour wage increase in the 9 summer of 2018 because, in fact, one that was 10 consistent with the prior bargaining proposal that 11 MITA made, but two, it's also consistent with our 12 prior practice of paying over scale. 13 MR. DRZYZGA: I don't think one occurrence 14 establishes a practice. 15 MR. BUTTRICK: It's not one occurrence if 16 you look at Company Exhibit 2. 17 JUDGE MUHL: Also, Ms. Bachelder, any 18 objection? 19 MS. BACHELDER: Relevance, I agree with Mr. 20 Drzyzga. 21 JUDGE MUHL: The objection is overruled. 22 Company 2 is admitted. 23 Q. (By Mr. Buttrick) So turning back to the 24 July 23 memorandum which is General Counsel Exhibit 25 22. I'll wait for everybody to get that back up.</p>
<p style="text-align: right;">Page 1545</p> <p>1 A. I don't recall being that high in years 2 past. Close to it, but not that high. 3 Q. Are there certain jobs where the operating 4 engineers in Michigan are paid over scale? 5 A. Yes. There is longstanding, common 6 practice throughout the industry to pay certain key 7 individuals higher than scale rate. 8 Q. This will be a new exhibit. This will be 9 Company Exhibit 2. 10 MR. DZYZRG: I have it. Thank you. 11 MS. BACHELDER: So do I. 12 Q. (By Mr. Buttrick) Mr. Rose, do you have 13 Company Exhibit 2 in front of you? 14 A. Yes. 15 Q. What is Company Exhibit 2? 16 A. This is a series of the same form, which is 17 an internal request form for approval to pay over 18 scale, which is generated by the area manager, 19 reviewed and approved by the vice-president, and then 20 reviewed and approved by myself. 21 Q. So looking at Exhibit 2; is your signature 22 found on these pages? 23 A. Yes. 24 Q. Is this a regularly kept business record of 25 the company?</p>	<p style="text-align: right;">Page 1547</p> <p>1 MS. BACHELDER: Say that number again. 2 Q. (By Mr. Buttrick) Sure. Actually, we can 3 skip it. He already addressed that. Never mind, I 4 retract the question. Let's look at another new 5 exhibit, which will be Company Exhibit 3. 6 MR. DRZYZGA: I have it. Thank you. 7 MS. BACHELDER: I do, too. 8 Q. (By Mr. Buttrick) Mr. Rose, do you have 9 Company Exhibit 3 in front of you? 10 A. Yes. 11 Q. What is Company Exhibit 3? 12 A. This is an internal payroll register dated 13 July 17, 2018 for a number of individuals. 14 Q. Is this a regularly kept business record of 15 the Company? 16 A. Yes. 17 Q. I move to admit Company Exhibit 3. 18 MR. DRZYZGA: Same objection; relevance. 19 MS. BACHELDER: I agree; same objection. 20 JUDGE MUHL: Same response? 21 MR. BUTTRICK: Yeah. Exactly. And what 22 this actually shows is just -- it's probably a 23 noncontroversial exhibit after I ask questions about 24 it, but it just shows we were doing the deductions and 25 it shows later in the summer where we stopped doing</p>

<p style="text-align: right;">Page 1548</p> <p>1 deductions or paying on the check. And so this 2 reflect that actually occurring. 3 JUDGE MUHL: The objection is overruled. 4 Company 3 is admitted. 5 Q. (By Mr. Buttrick) And Mr. Rose, if you 6 could walk through for Your Honor and other parties 7 how -- what this document reflects? 8 A. There are two pay periods in here. First 9 three pages -- actually, first two pages are dated 10 July 17, 2018. Subsequent pages starting with Page 3 11 are dated August 28 of '18. If you take, for example, 12 Mr. Juan Gonzales, Jr., which is second individual on 13 the very first page, if you come over to the next to 14 last column on the right-hand side which at the top is 15 headed with current amount, if you come down to the 16 two union vacation lines you will see there is a 17 dollar input for \$3.70, which is \$.5 per hour 18 component and \$388.65, which is 15 percent component. 19 So that was paid on the check during that period. If 20 you go forward to Page 4, which is now the August 28 21 time period. The same individual, Mr. Juan Gonzales, 22 Jr., go to the second to last column on the right, 23 current amount, come down to the exact same two lines 24 for union vacation. You will see there is no 25 deduction amount in there.</p>	<p style="text-align: right;">Page 1550</p> <p>1 company and for one of our subcontractors that they be 2 deficient. And this came about as they learned that 3 Local 324 was not accepting fringes on behalf of the 4 contractors. Therein, we would be noncompliant with 5 Davis Bacon. 6 Q. Mr. Rose, are the document in Exhibit 88 7 kept in the regular course of the Company's business 8 records? 9 A. Yes. 10 Q. I move to admit Company Exhibit 88. 11 MS. BACHELDER: No objection. 12 MR. DRZYZGA: No objection. 13 JUDGE MUHL: Company 88 is received. 14 MR. BUTTRICK: Everybody turn back to GC 15 Exhibit 20. 16 MS. BACHELDER: I have it. 17 MR. DRZYZGA: I have it. 18 MR. BUTTRICK: I haven't gotten it yet. I 19 have to get a taste of my own medicine. Does everyone 20 have Exhibit GC Exhibit 20 in front of them? 21 MS. BACHELDER: Uh-huh. 22 Q. (By Mr. Buttrick) Okay. Mr. Rose, looking 23 at GC Exhibit 20, it says in there that the funds 24 would "hold all contribution payments and fringe 25 reports from contractors such as your company who have</p>
<p style="text-align: right;">Page 1549</p> <p>1 Q. So I'm clear, the entries for Mr. Gonzales 2 reflects deductions taken from his pay? 3 A. Yes. 4 Q. And the next to last page, that reflects 5 that no deductions were being taken from his wage? 6 A. Correct. 7 Q. If everyone can look at a new exhibit which 8 will be Company Exhibit 88. 9 (Whereupon, a short break was taken.) 10 JUDGE MUHL: Let's go back on record. 11 Q. (By Mr. Buttrick) Thank you, everyone. 12 Everyone, if you can look at Company Exhibit 28 -- 13 excuse me -- 88, it will be a new exhibit. 14 MR. DRZYZGA: I have it. Thank you. 15 MS. BACHELDER: I have got it. 16 Q. (By Mr. Buttrick) Mr. Rose, do you have 17 Company Exhibit 88 in front of you? 18 A. Yes. 19 Q. Company Exhibit 88 looks like it's two 20 letters sent to you. What are these letters? 21 A. They are two letters dated late in August 22 of '18. One references one MDOT contract, Michigan 23 Department of Transportation, and the other letter 24 references a second one. And it is stating that they 25 are questioning our certified payrolls for our own</p>	<p style="text-align: right;">Page 1551</p> <p>1 a power of attorney with MITA." Do you see that? 2 A. Yes. 3 Q. So after you received this letter, what did 4 Rieth-Riley do in response? 5 A. We continued to submit our fringe payments, 6 but then we proceeded to withdraw our power of 7 attorney from MITA, which initially was done by letter 8 from Mr. Nystrom on behalf of all the power of 9 attorney contractors. 10 Q. So if everyone could look at Company 11 Exhibit 44? 12 MR. DRZYZGA: Is that a new one? 13 MR. BUTTRICK: No. It should already be in 14 evidence. 15 MR. DRZYZGA: I have it. Thank you. 16 MS. BACHELDER: Me, too. 17 Q. (By Mr. Buttrick) Mr. Rose, do you have 18 Company Exhibit 44 in front of you? 19 A. Yes. 20 Q. What is Company Exhibit 44? 21 A. This is an August 8th, 2018 letter from Mr. 22 Nystrom to Mr. Stockwell wherein he is indicating that 23 all the MITA contractors are rescinding their power of 24 attorney with MITA for the 324 negotiation. And that 25 by doing so, consistent with the letter from the fund,</p>

<p style="text-align: right;">Page 1552</p> <p>1 we would expect that the fringes would now be accepted 2 by the fund. 3 Q. To your knowledge, did Local 324 respond to 4 Mr. Nystrom's August 8th, 2018 letter? 5 A. Yes. 6 Q. If everyone could look at General Counsel 7 24. 8 MS. BACHELDER: I have it. 9 MR. DRZYZGA: I have it. 10 Q. (By Mr. Buttrick) Thank you, everybody. 11 Mr. Rose, do you have General Counsel 24 in front of 12 you? 13 A. Yes. 14 Q. What is that? 15 A. It's August 8, 2018 letter to Nancy Pearce 16 from Mr. Stockwell indicating that he does not accept 17 the letter from Mr. Nystrom withdrawing the POA on 18 behalf of the contractor; that it is now his opinion 19 each individual contractor would have to revoke their 20 POA for it to be acceptable. 21 Q. Did you receive a copy of this letter as 22 your role in LRD? 23 A. Yes. 24 Q. After receiving this, what did Rieth-Riley 25 do?</p>	<p style="text-align: right;">Page 1554</p> <p>1 Q. Did you receive any other communications 2 from the funds about Rieth-Riley's attempted or 3 Rieth-Riley's rescision -- excuse me -- of its POA? 4 A. Yes. 5 Q. If we can look at General Counsel Exhibit 6 26. 7 MR. DRZYZGA: I have it. Thank you. 8 MS. BACHELDER: So do I. 9 Q. (By Mr. Buttrick) Mr. Rose, do you have 10 General Counsel 26 in front of you? 11 A. Yes. 12 Q. What is General Counsel 26? 13 A. This is August 9, 2018 letter from the 14 Local 324 fringe benefit fund to us that we received 15 in the mail. It says, "Dear, contractor...", and 16 indicating that they will no longer be accepting our 17 fringes. 18 Q. Did Rieth-Riley receive from the fund its 19 contribution payment it attempted to make to the fund? 20 A. Yes. They returned our checks. 21 Q. Following Rieth-Riley's rescision of its POA 22 with MITA, did Mr. Stockwell or anyone at Local 324 23 for the fund communicate with you that it would begin 24 accepting your fund contribution? 25 A. No.</p>
<p style="text-align: right;">Page 1553</p> <p>1 A. We sent a company-specific POA to Mr. 2 Nystrom asking him to forward that to Local 324. 3 Q. If everyone can look at General Counsel 4 Exhibit 25. 5 MS. BACHELDER: Got it. 6 MR. DRZYZGA: One second please. I have 7 it. Thank you. 8 Q. (By Mr. Buttrick) Mr. Rose, do you have 9 General Counsel 25 in front of you? 10 A. Yes. 11 Q. What is General Counsel 25? 12 A. It is August 9, 2018 letter from myself to 13 MITA rescinding our power of attorney and making it 14 clear MITA will not represent Rieth-Riley going 15 forward in negotiation with Local 324. 16 Q. Why did Rieth-Riley send this letter to 17 MITA? 18 A. To be consistent with Mr. Stockwell's 19 letter that they would require a specific rescision 20 letter from ourselves as an individual company before 21 they would accept fringes. 22 Q. At the point where Rieth-Riley had 23 rescinded its POA, was Rieth-Riley willing to 24 negotiate on an individual basis with the Union? 25 A. Yes.</p>	<p style="text-align: right;">Page 1555</p> <p>1 Q. And following the rescision of your 2 Rieth-Riley POA with MITA, did Mr. Stockwell or anyone 3 at Local 324 communicate with the Union about 4 bargaining with Rieth-Riley? 5 A. No. We had jumped through every hoop they 6 laid out each time they moved the goal post and to no 7 avail. 8 Q. To your knowledge did Local 324 set up any 9 picket lines against any contractor in summer of 2018? 10 A. Yes. 11 Q. When? 12 A. Late August, a project I believe on I-96 of 13 Ajax Paving. 14 Q. And how did you find out about this? 15 A. From Mr. Johnston. 16 Q. Is Ajax Paving one of the other road 17 agreement MITA POA contractors? 18 A. Yes. 19 Q. Based upon your own personal knowledge, how 20 would you characterize what happened on that job site? 21 MS. BACHELDER: Objection; foundation. 22 MR. BUTTRICK: Well, I have asked him -- 23 he's established that he knew about it and I'm asking 24 him based upon his own knowledge what did he know; 25 what did he learn happened.</p>

<p style="text-align: right;">Page 1556</p> <p>1 MS. BACHELDER: And I'm objecting that</p> <p>2 there is no basis for establishing a personal</p> <p>3 foundation.</p> <p>4 JUDGE MUHL: Does Mr. Rose have personal</p> <p>5 knowledge of what happened up there?</p> <p>6 THE WITNESS: To my knowledge --</p> <p>7 JUDGE MUHL: Go ahead, sir.</p> <p>8 THE WITNESS: My knowledge is based on my</p> <p>9 communication with Mr. Johnston.</p> <p>10 JUDGE MUHL: Then why do we need get into</p> <p>11 that if he doesn't have direct knowledge?</p> <p>12 Q. (By Mr. Buttrick) Okay. Fair enough. I</p> <p>13 withdraw the question. What did Rieth-Riley do in</p> <p>14 response to the job action that occurred at Ajax?</p> <p>15 A. Subsequent to that occurrence, the LRD had</p> <p>16 a meeting several days later and the group decision</p> <p>17 was to proceed with a lockout, which was instigated, I</p> <p>18 believe, on September 4th.</p> <p>19 Q. If everyone can look at General Counsel</p> <p>20 Exhibit 71.</p> <p>21 MS. BACHELDER: I got it.</p> <p>22 MR. DRZYZGA: I have it. Thank you.</p> <p>23 Q. (By Mr. Buttrick) Mr. Rose, do you have</p> <p>24 General Counsel 71 in front of you?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1558</p> <p>1 Q. Who is he?</p> <p>2 A. He is with Grand River Construction. He is</p> <p>3 their MDOT works leader.</p> <p>4 Q. And based upon your role in the LRD, do you</p> <p>5 know whether or not Grand River Construction is a</p> <p>6 member of MITA?</p> <p>7 A. They are.</p> <p>8 Q. Based on your role in LRD do you know</p> <p>9 whether Grand River Construction is a member of AGC?</p> <p>10 A. They are.</p> <p>11 Q. Did you have any occasion to talk with Mr.</p> <p>12 Keersan about his experiences with AGC and Local 324?</p> <p>13 A. Yes, I have had multiple conversations with</p> <p>14 him.</p> <p>15 Q. When?</p> <p>16 A. Over several years, as early as 2016.</p> <p>17 Q. And tell me about those conversations.</p> <p>18 MS. BACHELDER: Objection; hearsay.</p> <p>19 MR. BUTTRICK: Once again, we're not going</p> <p>20 to the truth of the matter asserted. It goes to Mr.</p> <p>21 Rose's state of mind and what was motivating him on</p> <p>22 his -- the company's reaction to the labor dispute in</p> <p>23 the summer of 2018. And also Mr. Keersan is going to</p> <p>24 testify himself anyway later on anyway in the</p> <p>25 proceeding.</p>
<p style="text-align: right;">Page 1557</p> <p>1 Q. What is this?</p> <p>2 A. This is assignment of power of attorney to</p> <p>3 MITA on behalf of Rieth-Riley that I signed subsequent</p> <p>4 to the strike action -- the action at the Ajax job</p> <p>5 after we had gone through and jumped through all the</p> <p>6 hoops and loops of withdrawing the POA through Mr.</p> <p>7 Nystrom, and individually, and funds still not</p> <p>8 accepting our checks, we reissued our power of</p> <p>9 attorney to MITA.</p> <p>10 Q. Are you familiar, Mr. Rose, with an</p> <p>11 organization called the Association of General</p> <p>12 Contractors?</p> <p>13 A. Yes.</p> <p>14 Q. Is that also referred to as AGC?</p> <p>15 A. Yes.</p> <p>16 Q. What is, to your knowledge, AGC?</p> <p>17 A. It is an industry association similar to</p> <p>18 MITA, but they represent the building contractors.</p> <p>19 Q. And to your knowledge, based upon your role</p> <p>20 in the LRD, did MITA have any members who are also</p> <p>21 members of AGC?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know an individual named John</p> <p>24 Keersan?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1559</p> <p>1 MS. BACHELDER: It's not relevant if it</p> <p>2 only goes to his state of mind.</p> <p>3 MR. BUTTRICK: I think it's completely</p> <p>4 relevant if it goes to Mr. Rose's state of mind about</p> <p>5 what action Rieth-Riley took in reaction to what he</p> <p>6 understood may have happened with AGC.</p> <p>7 JUDGE MUHL: The other individual is Mr.</p> <p>8 Keersan?</p> <p>9 MR. BUTTRICK: Yeah. K-e-r-s-a-n, I think.</p> <p>10 JUDGE MUHL: I couldn't remember it. And</p> <p>11 he will testify and is this going to corroborate what</p> <p>12 Mr. Rose is going to testify to here?</p> <p>13 MR. BUTTRICK: That's correct.</p> <p>14 JUDGE MUHL: Okay. For now I'll allow it</p> <p>15 pursuant to state of mind, not for the truth of the</p> <p>16 matter asserted. Subject to later corroboration.</p> <p>17 Objection overruled.</p> <p>18 MR. DRZYZGA: I have another question. I</p> <p>19 request specific conversation for each conversation</p> <p>20 over the years; day, time, place, et cetera to</p> <p>21 establish a foundation for these alleged</p> <p>22 conversations.</p> <p>23 JUDGE MUHL: We can get into that.</p> <p>24 Q. (By Mr. Buttrick) So, I guess, Mr. Rose,</p> <p>25 when was the first time you spoke with Mr. Keersan</p>

<p style="text-align: right;">Page 1560</p> <p>1 about his experience at AGC and Local 324?</p> <p>2 A. I believe it was sometime in 2016.</p> <p>3 Q. And tell me about that conversation.</p> <p>4 A. That conversation was consistent with the</p> <p>5 others.</p> <p>6 MR. DRZYZGA: Objection; lack of</p> <p>7 foundation. 2016 is big year. I need time, place,</p> <p>8 and date.</p> <p>9 JUDGE MUHL: To the best of your</p> <p>10 recollection, Mr. Rose, if you recall.</p> <p>11 THE WITNESS: My conversations with Mr.</p> <p>12 Keersan were over the entire course of that period at</p> <p>13 MITA board meetings or MITA LRD meetings.</p> <p>14 Q. (By Mr. Buttrick) Can you recall what</p> <p>15 months those conversations were in?</p> <p>16 A. No; not specifically to the month.</p> <p>17 Q. Okay.</p> <p>18 A. Without going back and looking at a</p> <p>19 schedule for a board meeting.</p> <p>20 Q. Can you recall the first of those</p> <p>21 conversations in 2016 at MITA, at the MITA location</p> <p>22 wherein you discussed with Mr. Keersan AGC's</p> <p>23 experience with Local 324?</p> <p>24 A. Yes. We were looking forward to the MITA</p> <p>25 negotiations and preparing at that point in time with</p>	<p style="text-align: right;">Page 1562</p> <p>1 specific about what Mr. Keersan told you.</p> <p>2 Q. (By Mr. Buttrick) So in that 2016</p> <p>3 conversation at MITA with Mr. Keersan, what did he</p> <p>4 tell you?</p> <p>5 A. He told me that the representatives from</p> <p>6 324 did not negotiate with the intent of getting to a</p> <p>7 successor agreement. That they insisted on their</p> <p>8 self-authored language. He told me that they</p> <p>9 specifically let the contract expire. He told me they</p> <p>10 specifically targeted several large contractors and</p> <p>11 exerted pressure on them with the intent to get them</p> <p>12 to sign the union self-authored contract. He told me</p> <p>13 then the other smaller union contractors felt they</p> <p>14 were obligated to follow suit.</p> <p>15 Q. And did you reference, to use your words,</p> <p>16 coercion.</p> <p>17 MS. BACHELDER: Objection.</p> <p>18 MR. BUTTRICK: I haven't finished my</p> <p>19 question.</p> <p>20 MS. BACHELDER: I'm sorry.</p> <p>21 Q. (By Mr. Buttrick) Did you use the word</p> <p>22 coercion? Did Mr. Keersan tell you what he meant by</p> <p>23 coercion?</p> <p>24 MS. BACHELDER: I don't believe -- sorry.</p> <p>25 Did I step on you again, Stuart?</p>
<p style="text-align: right;">Page 1561</p> <p>1 an understanding what transpired with AGC negotiations</p> <p>2 and was ongoing in negotiation that the tactics taken</p> <p>3 by 324. We reviewed and assumed that they would</p> <p>4 pursue those same tactics wherein they would feign to</p> <p>5 negotiate, but never accomplish anything substantively</p> <p>6 and continue that process until the contract expired,</p> <p>7 and then still continuing not to negotiate to a</p> <p>8 successor agreement. Then selecting several large</p> <p>9 contractors and applying coercion and pressure on them</p> <p>10 to get them to cave and agree to a contract that the</p> <p>11 union self-authored. And they were successful in</p> <p>12 getting one or two large contractors to cave and sign</p> <p>13 their agreement. At that point the smaller union</p> <p>14 contractors who do a lot of subcontractor for the</p> <p>15 larger ones felt they were in a position they had no</p> <p>16 choice but to sign the agreement that they otherwise</p> <p>17 would not sign.</p> <p>18 Q. And you testified --</p> <p>19 MS. BACHELDER: Your Honor, this was</p> <p>20 completely nonresponsive to the question which asked,</p> <p>21 I believe, what was said. And he went into a</p> <p>22 narrative about what they were afraid of and what he</p> <p>23 thinks they did. It wasn't what was said.</p> <p>24 JUDGE MUHL: I agree. The objection is</p> <p>25 sustained. Mr. Rose, you're going to have to be</p>	<p style="text-align: right;">Page 1563</p> <p>1 MR. BUTTRICK: No. No.</p> <p>2 JUDGE MUHL: Go ahead.</p> <p>3 MS. BACHELDER: I don't believe he used the</p> <p>4 word coercion. Maybe I missed --</p> <p>5 JUDGE MUHL: I heard the word, but was that</p> <p>6 something Mr. Keersan said to you?</p> <p>7 THE WITNESS: Yes.</p> <p>8 JUDGE MUHL: Okay. Then I'll allow the</p> <p>9 question. You can answer.</p> <p>10 Q. (By Mr. Buttrick) The question is did Mr.</p> <p>11 Keersan elaborate on what "coercion" meant?</p> <p>12 A. Yes. He communicated to me they attempted</p> <p>13 to withhold operators from projects; that they applied</p> <p>14 pressure to owners of projects, and that they tried to</p> <p>15 slow the work down.</p> <p>16 Q. Do you know what the phrase "wood saw</p> <p>17 strike" means?</p> <p>18 A. Yes.</p> <p>19 Q. Did Mr. Keersan talk to you about the</p> <p>20 concept of a wood saw strike at AGC?</p> <p>21 MS. BACHELDER: Objection.</p> <p>22 MR. DRZYZGA: Objection; leading.</p> <p>23 MR. BUTTRICK: That's not leading. It's a</p> <p>24 "yes" or "no" question. The answer could be "yes" or</p> <p>25 "no". The leading question would be Mr. Keersan told</p>

<p style="text-align: right;">Page 1564</p> <p>1 you about wood saw strikes at AGC, didn't he; that's a 2 leading questions. 3 MR. DRZYZGA: I think it's leading. 4 JUDGE MUHL: Your objection is overruled. 5 It's a "yes" or "no" question. 6 THE WITNESS: Yes, he did. We discussed 7 that was the tactic that was employed there. And I 8 was concerned that it would be same tactic used with 9 the MITA contractors. 10 Q. (By Mr. Buttrick) So after that 11 conversation in 2016 with Mr. Keersan at MITA, did you 12 have any other conversations with Mr. Keersan? 13 A. I had several conversations with him going 14 forward as our experience with 324 continued and as 15 situations arose such as we were of the belief that 16 324 was just going through the motions for 17 negotiation. Mr. Keersan said that's exactly how it 18 happened with AGC. 19 Q. Let's try to put this -- 20 MS. BACHELDER: Objection; Your Honor, 21 there is no way I can object when there is a limited 22 question and narrative answer. He asked if there were 23 other conversations and Mr. Rose went on to expound on 24 his experience with 324. 25 JUDGE MUHL: Let's break it down a little</p>	<p style="text-align: right;">Page 1566</p> <p>1 relates to MITA's experience with Local 324? 2 A. Yes. 3 Q. When was that? 4 A. In 2018, when the contract expired we 5 specifically discussed that with AGC they had let the 6 contract expire; same thing happened with MITA. 7 Q. And where was that conversation? 8 A. At MITA's office. 9 Q. And who was present? 10 A. Mr. Keersan, myself, other LRD members, and 11 board members. 12 Q. Did you have any other conversations with 13 Mr. Keersan related to AGC's experience with Local 324 14 and MITA after that conversation? 15 A. I believe there may be one other following 16 up on that, similar with the discussion. 17 Q. Turning back to the labor issue that 18 happened with Ajax -- strike that. Do you know -- you 19 know Mr. Stockwell; correct? 20 A. Yes. 21 Q. Do you know when Mr. Stockwell became the 22 business manager of Local 324? 23 A. Not specifically, but I know it's been a 24 number of years. 25 Q. Do you know whether or not he would have</p>
<p style="text-align: right;">Page 1565</p> <p>1 bit. Mr. Rose, just take it one question at a time 2 with Mr. Buttrick. And we can proceed and narrow down 3 when this conversation occurred and what was said in 4 the conversation. The objection is sustained. 5 Q. (By Mr. Buttrick) When was the second 6 conversation you had with Mr. Keersan about AGC and 7 its experience with Local 324 vis a vis MITA and his 8 experience with Local 324? 9 A. Late in 2017. 10 Q. Where was that conversation? 11 A. At MITA's office. 12 Q. Who was present? 13 A. Will Keersan, myself, and number of other 14 board members and contractors. 15 Q. What was discussed at that conversation? 16 A. We were discussing upcoming negotiations 17 and situation around that. 18 Q. What did Mr. Keersan tell you? 19 A. Told me that what we had experienced to 20 date was consistent with what they experienced with 21 AGC. 22 Q. Did he say anything else? 23 A. No. 24 Q. Did you have a third conversation with Mr. 25 Keersan related to AGC's experiences with 324 as it</p>	<p style="text-align: right;">Page 1567</p> <p>1 been the business manager in 2016 of Local 324? 2 A. Yes. 3 Q. Was he? 4 A. Yes. 5 Q. Following what you learned about what 6 happened with Ajax in the summer of 2018, what did 7 Rieth-Riley do next? 8 A. We were involved with LRD meetings several 9 days thereafter and we initiated a strike out -- a 10 lockout on September 4th. 11 Q. Why did Rieth-Riley specifically 12 participate in the lockout? 13 A. This was a defensive move on behalf of the 14 industry to prevent against a wood saw strike against 15 what had been conveyed to me by Mr. Keersan that 16 happened with AGC. 17 Q. And based upon your role in the LRD of 18 MITA, were you aware of whether or not there was any 19 other job action taken again MITA contractors in the 20 summer of 2018? 21 A. Yes. There was a contractor in the upper 22 peninsula -- a prime contractor, Zenith Tech, and they 23 were trying to progress that project consistent with 24 the years' old practice of bringing Local 139 25 operators out of Wisconsin. At that point in time</p>

<p style="text-align: right;">Page 1568</p> <p>1 Local 324 objected to that and would not allow the 139 2 operating engineers to come into the state which 3 severely delayed the schedule on that project. 4 MS. BACHELDER: Objection; foundation and 5 hearsay. 6 JUDGE MUHL: Mr. Buttrick, this is being 7 offered for what was reported to him; correct? I 8 didn't catch your response. 9 MR. BUTTRICK: I said that's absolutely 10 correct. 11 JUDGE MUHL: With the same limitation as 12 before, Mr. Rose, can you tell me again where this job 13 was or what it was called? 14 THE WITNESS: It was in the upper 15 peninsula, on the west end of the upper peninsula of 16 Michigan. It was a bridge project. I believe the 17 prime contractor was Zenith Tech. 18 JUDGE MUHL: Okay. Was this in -- I may 19 butcher the name, Escanaba? 20 THE WITNESS: Escanaba; correct. 21 JUDGE MUHL: I want to make that clear in 22 the record. Go ahead. 23 Q. (By Mr. Buttrick) and Mr. Rose, who told 24 you about the circumstances at Escanaba? 25 A. The representative from their company.</p>	<p style="text-align: right;">Page 1570</p> <p>1 A. Yes. 2 Q. And so the bottom of Page 2, top of Page 3 3 you see a series of bullet points? 4 A. Yes. 5 Q. Read those to yourself. You don't have to 6 read them out loud. Let me know when you're done. 7 A. Okay. 8 Q. At the time Rieth-Riley locked out its 9 operating engineers, based upon your role in LRD, were 10 you aware of these circumstances and the bullet points 11 having occurred? 12 A. Yes. 13 Q. Now, at the time the MITA contractors 14 locked out the operating engineers, did the MITA 15 contractors provide the Union with a proposed contract 16 at that time? 17 A. Yes. 18 Q. Why did they do that? 19 A. They made an offer to create a subsequent 20 agreement to the one that had expired to continue the 21 work and it was a means to end the lockout. 22 Q. At the time Rieth-Riley locked out its 23 operating engineers, did Rieth-Riley care whether or 24 not it bargained with the operating engineers on 25 single or multi employer basis?</p>
<p style="text-align: right;">Page 1569</p> <p>1 Q. Do you remember who that was? 2 A. It would be Mark -- I'm trying to remember 3 his last name. Forgive me. 4 MR. DRZYZGA: Filamanwicz. 5 MS. BACHELDER: Filamanwicz. 6 Q. (By Mr. Buttrick) If everyone can pull up 7 Company Exhibit 202. This is not a new one. This is 8 already in the record. Does everyone have that? 9 MR. DRZYZGA: I have it. I'm trying to 10 review it quickly. Thank you. 11 MR. BUTTRICK: It's a masterpiece by a very 12 talented author. 13 MS. BACHELDER: Self author. 14 MR. BUTTRICK: For the record, my tongue is 15 firmly in my cheek. When everyone is ready and 16 comfortable with it, let me know. 17 MS. BACHELDER: I got it. 18 MR. DRZYZGA: I'm good. Thank you. 19 Q. (By Mr. Buttrick) Mr. Rose, do you have 20 Company Exhibit 202 in front of you? 21 A. Yes. 22 Q. If you could just turn to the bottom of 23 Page 2 and to the top of Page 3 -- actually, strike 24 that. Let me start here. Did you receive a copy of 25 this letter as part of your role in LRD?</p>	<p style="text-align: right;">Page 1571</p> <p>1 MS. BACHELDER: Objection; irrelevant. 2 MR. BUTTRICK: I believe that's one of the 3 key allegations of illegality in the case is whether 4 or not the lockout was for improper motive of forcing 5 multi employer bargaining. If Rieth-Riley is accused 6 of such conduct, it's completely relevant what the 7 CEO's intent was when it's offered a contract 8 proposal. 9 MS. BACHELDER: Not if that intent was not 10 communicated in anyway. His private musings in the 11 middle of the night don't matter. 12 JUDGE MUHL: Let's start out with what he 13 thought and then whether it was communicated with 14 anyone. So the objection is overruled for now. 15 Q. (By Mr. Buttrick) Mr. Rose, if you can go 16 ahead and answer the question. We might have to have 17 the court reporter read it back. 18 (Whereupon, the last question was read 19 back.) 20 THE WITNESS: No. 21 Q. (By Mr. Buttrick) Why did you say that? 22 A. We wanted a fair contract going forward 23 whether it was multi employer, coordinated bargaining, 24 or individual bargaining. We had tried multiple 25 things prior to and no avail. It didn't matter to us,</p>

<p style="text-align: right;">Page 1572</p> <p>1 we just wanted a fair contract to continue going 2 forward. 3 Q. Subsequent to the lockout did Rieth-Riley 4 bargain on a single employer basis with the Union? 5 A. Yeah. 6 MS. BACHELDER: Your Honor -- 7 JUDGE MUHL: Is there an objection there? 8 I couldn't quite make it out. 9 MS. BACHELDER: Yes. I renew my objection. 10 There is no evidence that was communicated to the 11 Union and the individual bargaining that took place 12 began in October of 2018. So, as I say, he only 13 testified to his musings about whether or not they 14 cared. There is no evidence that it was communicated 15 to the union. 16 MR. BUTTRICK: I think the Union actually 17 received ample communication about the contractors 18 including Rieth-Riley withdrawing their POA. So they 19 are on single employer status at that point. The 20 Union had it and rejected it, I think that was well 21 communicated to the Union actually. 22 MS. BACHELDER: That was not a 23 communication that they were abandoning multi employer 24 bargaining. 25 MR. BUTTRICK: I don't know what else a</p>	<p style="text-align: right;">Page 1574</p> <p>1 A. This is a memorandum to our operating 2 engineers in Michigan notifying them that there's not 3 been a successor agreement negotiated between MITA and 4 324 even though there have been a long successful 5 history of doing so, and indicating to them that the 6 strike had occurred on the Ajax project and in doing 7 so, in support of our bargaining position and 8 protecting against wood saw strikes, we are going to 9 lock the employees out starting September 4th. And we 10 enclosed a copy of our offer, a new statewide 11 agreement indicating that the lockout would end when 12 that was ratified. 13 Q. I move to admit Company Exhibit 89. 14 MS. BACHELDER: No objection. 15 MR. DRZYZGA: No objection. 16 JUDGE MUHL: Company 89 is received. 17 Q. (By Mr. Buttrick) And this goes to, I 18 guess, the philosophical discussion that Amy and I had 19 on the record a moment ago, but in Company 89, did you 20 inform your operating engineers about the efforts that 21 Rieth-Riley and MITA took to bargain with the 22 operators in the summer of 2018 and prior? 23 A. Yes. 24 Q. Where is that found? 25 A. In the middle paragraph.</p>
<p style="text-align: right;">Page 1573</p> <p>1 retraction of POA would mean. 2 JUDGE MUHL: This it more argumentative 3 than it is an objection to the testimony. So far Mr. 4 Rose has made it clear that was the thought in his 5 head, not something that was communicated to anybody 6 at the Union. So -- 7 MS. BACHELDER: Thank you. 8 JUDGE MUHL: The objection is overruled and 9 you can further advance those arguments in your brief. 10 Q. (By Mr. Buttrick) If we can look at 11 Company Exhibit 89. 12 MR. DRZYZGA: Is that new one, sir? 13 MR. BUTTRICK: Yes, I think it is a new 14 one. I was checking the same thing. Yeah, that's a 15 new one. 16 MR. DRZYZGA: I have it. Thank you. 17 MS. BACHELDER: So do I. 18 Q. (By Mr. Buttrick) Mr. Rose, do you have 19 Company Exhibit 89 in front of you? 20 A. Yes. 21 Q. Is that your signature at the bottom? 22 A. Yes. 23 Q. Did you draft this? 24 A. Yes. 25 Q. What is Company Exhibit 89?</p>	<p style="text-align: right;">Page 1575</p> <p>1 Q. Is that the paragraph that begins with 2 importantly? 3 A. Importantly, yeah. 4 Q. How is this Company 89 provided to 5 employees? 6 A. This was hand-delivered. 7 Q. When did the lockout begin? 8 A. It began on September 4th, 2018. 9 Q. And approximately how many operators did 10 Rieth-Riley lock out? 11 A. Plus or minus 130. 12 Q. And approximately when did the lockout end? 13 A. I believe September 27th, 2018. 14 Q. How did Rieth-Riley inform its employees 15 that the lockout was ending? 16 A. We called them. 17 Q. At the time that it ended, had the Union 18 signed the multi employer contract with MITA? 19 A. No. 20 Q. Was that a condition to you bringing your 21 workers back? 22 A. No. 23 Q. How did the lockout end? 24 A. There was a joint meeting at the request of 25 Governor Snyder between the parties held in Lansing</p>

<p style="text-align: right;">Page 1576</p> <p>1 wherein the governor asked both parties to put their 2 differences aside and work in good faith towards a new 3 agreement. And during that time period to recommence 4 work so as not to impact the projects and impact the 5 traveling public. 6 Q. Did Rieth-Riley then begin bargaining with 7 the Union? 8 A. Yes. 9 Q. Approximately when was that? 10 A. I believe our first meeting was November 11 20th of 2018. 12 Q. And what was the format of that bargaining? 13 A. It was a coordinated bargaining. There 14 were several other contractors that were interested in 15 bargaining individual contracts; they were there only 16 to observe. 17 Q. And did Rieth-Riley continue bargaining on 18 a coordinated basis with the Union? 19 A. We only had two meetings under that format; 20 remaining eight were strictly just Rieth-Riley and 21 324. 22 Q. If everybody could take a look at General 23 Counsel Exhibit 36. 24 MS. BACHELDER: I got it. 25 MR. DRZYZGA: Got it.</p>	<p style="text-align: right;">Page 1578</p> <p>1 union on single employer bargaining basis? 2 A. Eight. 3 Q. Are you still in single employer bargaining 4 with Local 324? 5 A. Yes. 6 Q. Are there any outstanding issues from your 7 perspective? 8 A. There are three major outstanding issues; 9 one is the hiring hall clause, number two is the 10 mandatory subcontracting clause, and number three is a 11 poison pill clause that they inserted just for 12 Rieth-Riley wherein it states that we are to forfeit 13 one third of our companywide profit, which is, again, 14 a poison pill clause that no reasonable contractor 15 would ever sign. 16 Q. You testified earlier that following the 17 expiration of the road agreement Rieth-Riley has been 18 paying vacation and holiday fund contributions 19 directly to employees; correct? 20 A. Correct. 21 Q. I think you testified that it was because 22 during that period of time in the summer of 2018 the 23 funds refused to accept those contributions; correct? 24 A. Correct. 25 Q. Turning now to after the lockout, did the</p>
<p style="text-align: right;">Page 1577</p> <p>1 Q. (By Mr. Buttrick) Mr. Rose, do you have 2 General Counsel 36 in front of you? 3 A. Yes. 4 Q. Is that your signature at the bottom? 5 A. Yes. 6 Q. What is General Counsel 36? 7 A. This is October 11, 2018 letter to Mr. 8 Stockwell from myself confirming our 9(a) status and 9 requesting dates to negotiate the agreement between 10 Rieth-Riley and 324. And as I mentioned before on a 11 coordinated basis, representatives from some of the 12 other individuals that might be there and observing. 13 Q. I can't recall, so forgive me if you 14 answered this. Approximately how many meetings did 15 you have on a coordinated basis with the Union? 16 A. Two. 17 Q. And after those two meeting what was the 18 basis of the bargaining? 19 A. Single employer; just Rieth-Riley. 20 Q. Approximately when did single employer 21 bargaining start? 22 A. It was the third meeting, which we probably 23 had about early 2019. 24 Q. And approximately how many meetings, 25 bargaining meetings, did Rieth-Riley have with the</p>	<p style="text-align: right;">Page 1579</p> <p>1 funds position change with regard to accepting or not 2 accepting Rieth-Riley's contribution? 3 A. Yes. Particularly with our 9(a) status 4 they insisted that we pay all fringes including 5 vacation dollars that we had paid directly on the 6 employees' check. 7 Q. And so when the funds' positions changed, 8 how did that impact Rieth-Riley? 9 A. They accepted our checks and then we became 10 compliant with Davis Bacon and made sure that we were 11 both compliant with the 9(a) agreement. 12 Q. Now, in the summer of 2018, had you paid 13 those same amounts directly to employees? 14 A. Yes. We paid vacation fringes directly on 15 their check as direct income. 16 Q. Okay. And so how did the impact of paying 17 it directly to employees affect Rieth-Riley when it 18 had to make those same payments directly to the fund? 19 MR. DRZYZGA: Objection. 20 THE WITNESS: It created -- 21 MR. DRZYZGA: I think this line of 22 questions probably goes more to remedy than anything 23 else, Your Honor. And we could address it in 24 compliance proceeding, but I don't see how it's 25 relevant otherwise.</p>

<p style="text-align: right;">Page 1580</p> <p>1 MR. BUTTRICK: Well, I think Mr. Rose will 2 testify about the potential significant economic harm 3 to Rieth-Riley by making a double payment. And so 4 that motivated his decision making in the fall of 2018 5 about what Rieth-Riley did in response. 6 JUDGE MUHL: I think we've had -- this 7 topic has been addressed already elsewhere in hearing. 8 I'll allow it. Overruled. 9 Q. (By Mr. Buttrick) Go ahead and answer the 10 question. 11 A. It created a situation where we double paid 12 the vacation fringe to the tune of \$800,000. 13 Q. Now, you can look at General Counsel 14 Exhibit 35. 15 MS. BACHELDER: I have it. 16 MR. DRZYZGA: I have it. 17 Q. (By Mr. Buttrick) Mr. Rose, do you have 18 General Counsel Exhibit 35 in front of you? 19 A. Yes. 20 Q. Is this a letter from you to Mr. Stockwell? 21 A. Yes. 22 Q. Dated October 11, 2018? 23 A. Yes. 24 Q. What is this letter? 25 A. Communication to Mr. Stockwell about the</p>	<p style="text-align: right;">Page 1582</p> <p>1 that it will be pursued by all means permitted under 2 the law. 3 Q. Did you understand from Mr. Stockwell's 4 letter that it was the Union's position that the funds 5 needed to be made whole immediately? 6 MS. BACHELDER: Objection; it's his 7 understanding. 8 JUDGE MUHL: I don't know if that says that 9 in the letter. 10 MR. BUTTRICK: It does. 11 JUDGE MUHL: Then the objection is 12 sustained. 13 THE WITNESS: In the last paragraph it says 14 -- 15 MS. BACHELDER: Objection. 16 JUDGE MUHL: I have got what it says in the 17 letter. That will be sufficient. Thank you. 18 Q. (By Mr. Buttrick) In General Counsel 37 19 did Mr. Stockwell make any proposals to you about how 20 Rieth-Riley could make the fund whole and avoid a 21 double payment? 22 A. No. 23 MS. BACHELDER: Objection; the letter 24 speaks for itself. 25 JUDGE MUHL: It does. It does. Sustained.</p>
<p style="text-align: right;">Page 1581</p> <p>1 vacation fringe, specifically the fact that we had 2 double paid and that we were proposing a deduction 3 program and provided specific steps in how that would 4 be processed. And being that we were close to the end 5 of the construction season and limited time to begin 6 to recoup these dollars. We had our proposed dates to 7 instigate this process and gave him a date by which to 8 respond to our proposal. 9 Q. Okay. If everybody can look at General 10 Counsel 37. 11 MS. BACHELDER: I got it. 12 MR. DRZYZGA: I have it. 13 Q. (By Mr. Buttrick) Mr. Rose, do you have 14 General Counsel 37 in front of you? 15 A. Yes. 16 Q. What is General Counsel 37? 17 A. October 15, 2018 letter from Mr. Stockwell 18 to myself wherein he referenced my prior October 11 19 letter regarding negotiation dates indicated that he 20 was not particularly interested in coordinated 21 bargaining and also responded to our letter in regards 22 to our proposal on the vacation fringe. And the only 23 indication we had from that was that they said if any 24 deductions are taken from employees pay that are in 25 violation of federal and state law and our contract</p>	<p style="text-align: right;">Page 1583</p> <p>1 MR. BUTTRICK: Look at General Counsel 2 Exhibit 38. 3 MS. BACHELDER: Got it. 4 MR. DRZYZGA: I have it. 5 MR. BUTTRICK: Amy, do you have it? 6 MS. BACHELDER: I do. 7 Q. (By Mr. Buttrick) Mr. Rose, do you have 8 General Counsel 38 in front of you? 9 A. Yes. 10 Q. What is General Counsel 38? 11 A. It is October 15, 2018 letter to Mr. 12 Stockwell from myself following up on previous 13 communication in reference to the vacation fringe and 14 clarifying that it was our understanding their 15 previous response they were not entering into 16 negotiations on our proposed deduction program and 17 that we were reiterating our proposal and that we were 18 going to proceed with that unless we heard from them 19 by a specific date. 20 Q. And did Local 324 respond to this letter? 21 A. No. 22 Q. Let's look at General Counsel Exhibit 39? 23 MR. DRZYZGA: I have it. Thank you. 24 MS. BACHELDER: So do I. 25 Q. (By Mr. Buttrick) Mr. Rose, do you have GC</p>

<p style="text-align: right;">Page 1584</p> <p>1 39 in front of you?</p> <p>2 A. Yes.</p> <p>3 Q. What is GC 39?</p> <p>4 A. It's October 16, 2018 letter from Mr.</p> <p>5 Stockwell to myself wherein he still has not responded</p> <p>6 to our proposal on the vacation deduction only to say</p> <p>7 that we're free to bring that up in future negotiation</p> <p>8 sessions?</p> <p>9 Q. And so at the time you received this letter</p> <p>10 which would have been on or about October 16, 2018,</p> <p>11 were there any dates set for bargaining between</p> <p>12 Rieth-Riley and Local 324?</p> <p>13 A. No.</p> <p>14 Q. So what did Rieth-Riley do next?</p> <p>15 A. We proceeded with the deduction program</p> <p>16 that we proposed to 324.</p> <p>17 Q. Did Rieth-Riley notify its operators before</p> <p>18 it began the deductions?</p> <p>19 A. Yes.</p> <p>20 Q. If we can have everyone look at GC Exhibit</p> <p>21 40.</p> <p>22 MS. BACHELDER: Got it.</p> <p>23 MR. DRZYZGA: I have it.</p> <p>24 Q. (By Mr. Buttrick) Mr. Rose, do you have GC</p> <p>25 40 in front of you?</p>	<p style="text-align: right;">Page 1586</p> <p>1 issue. So the objection is sustained. We can move</p> <p>2 on from that.</p> <p>3 MR. BUTTRICK: Okay. If we can go off the</p> <p>4 record for just a moment. I might be done, but I want</p> <p>5 to check with people smarter than I to see if there is</p> <p>6 anything else.</p> <p>7 JUDGE MUHL: Let's go off the record.</p> <p>8 (Whereupon, a short break was taken.)</p> <p>9 JUDGE MUHL: Let's go back on the record.</p> <p>10 Anything further, Mr. Buttrick?</p> <p>11 MR. BUTTRICK: No, Your Honor. Thank you.</p> <p>12 JUDGE MUHL: Mr. Drzyzga, cross exam?</p> <p>13 MR. DRZYZGA: It's about lunch time, sir.</p> <p>14 I need some time because I'm using my screen, I</p> <p>15 apologize.</p> <p>16 JUDGE MUHL: I would think you'd be a</p> <p>17 little more efficient if we held out on lunch for a</p> <p>18 little while in your cross exam, but if everyone is</p> <p>19 ready for the lunch break, we can do that now.</p> <p>20 MS. BACHELDER: May I ask before we break</p> <p>21 if Mr. Rose has an affidavit?</p> <p>22 MR. DRZYZGA: My understanding is he</p> <p>23 doesn't based upon my review of the Region's files.</p> <p>24 MS. BACHELDER: Okay.</p> <p>25 JUDGE MUHL: Let's go off the record.</p>
<p style="text-align: right;">Page 1585</p> <p>1 A. Yes.</p> <p>2 Q. What is General Counsel Exhibit 40?</p> <p>3 A. This is a memorandum from our company to</p> <p>4 our operating engineers 324 employees giving them the</p> <p>5 history and background of the vacation fringe and that</p> <p>6 we would be proceeding with the proposed deduction</p> <p>7 program. And Mr. Stockwell had been given two chances</p> <p>8 to negotiate on this and refused to do so.</p> <p>9 Q. And Mr. Rose, did employees suffer any net</p> <p>10 loss in money because of these payroll deductions.</p> <p>11 A. No.</p> <p>12 MS. BACHELDER: Objection; irrelevant.</p> <p>13 JUDGE MUHL: Why do we need to get into</p> <p>14 that?</p> <p>15 MR. BUTTRICK: I think it's important to</p> <p>16 show that if we're alleging this was unlawful conduct</p> <p>17 that it -- actually nothing actually happened because</p> <p>18 there was no net loss, so it was a nullity.</p> <p>19 MS. BACHELDER: A unilateral change is not</p> <p>20 dependent on harm.</p> <p>21 MR. BUTTRICK: Of course our position is it</p> <p>22 wasn't a unilateral change.</p> <p>23 JUDGE MUHL: Right, but Ms. Bachelder is</p> <p>24 right. If it was ironed out, ultimately that's not</p> <p>25 going to make any difference in terms of the legal</p>	<p style="text-align: right;">Page 1587</p> <p>1 (Whereupon, a short break was taken.)</p> <p>2 JUDGE MUHL: Let's go back on the record.</p> <p>3 EXAMINATION</p> <p>4 QUESTIONS BY MR. DRZYZGA:</p> <p>5 Q. My name is Robert Drzyzga. I'm an attorney</p> <p>6 with the National Labor Relations Board. I want to</p> <p>7 thank you for taking your time to participate in this</p> <p>8 hearing. I know you're a busy man based upon the</p> <p>9 number of things you got going with your companies and</p> <p>10 the employees you take care of. I'm just going to ask</p> <p>11 you a few questions about your testimony today. If</p> <p>12 you need time, please let me know. If you can't hear</p> <p>13 me, please let me know. I was wondering, Your Honor,</p> <p>14 if GC 57 could be put up on the screen by our</p> <p>15 gatekeeper.</p> <p>16 MS. BACHELDER: Before we start, can I ask</p> <p>17 Mr. Buttrick, I have got text here from Tony</p> <p>18 Bolanowski. Do you expect he will be needed today?</p> <p>19 MR. BUTTRICK: Mr. Preller, if you're on,</p> <p>20 could you respond on that?</p> <p>21 MR. PRELLER: Yes, I am. Honestly, this</p> <p>22 was going to be a question mark based on how long</p> <p>23 cross examination was expected to go, both for Mr.</p> <p>24 Rose and for our next witness. But at this point,</p> <p>25 yes, we are anticipating probably needing either Mr.</p>

24 (Pages 1584 to 1587)

<p style="text-align: right;">Page 1588</p> <p>1 Bolanowski, Mr. Dombrow, or both depending how quick 2 this is going. Frankly, we expected direct 3 examination to take longer. We anticipated more 4 objections, so this was -- 5 MS. BACHELDER: Sorry to disappoint. 6 JUDGE MUHL: It's fine that way. I'll put 7 that in there. Okay. Mr. Reynolds, I'm going to 8 leave the exhibit showing to you. 9 MR. REYNOLDS: That's the ones you sent out 10 earlier? 11 MR. DRZYZGA: This is it from the first day 12 of the hearing back in October 2019, maybe it should 13 be in GC exhibits; it's 57. It's the first day or 14 first week. I'd like to have it shared on the screen 15 to make sure. All I have is the bulk exhibits and I'm 16 not an expert in cutting and pasting out of them. 17 MR. REYNOLDS: I need to make sure I have 18 got that myself here. 19 JUDGE MUHL: I think it's probably easiest 20 if you can access it through Nex Gen. 21 MR. BUTTRICK: Mr. Drzyzga, I don't want to 22 disrupt the flow. Can you give us -- list what 23 exhibits you might use are so that we can print them 24 for Mr. Rose? 25 MR. DRZYZGA: 57 is -- at this point is the</p>	<p style="text-align: right;">Page 1590</p> <p>1 agreement. 2 MS. BACHELDER: Nope, 77 is multi employer 3 bargaining agreement. 4 MR. DRZYZGA: Well, 57 is one as well, I 5 believe. Let me look. 6 MS. BACHELDER: It's not multi employer 7 bargaining agreement. 8 MR. DRZYZGA: 57? Let me look at what I'm 9 looking at then. 10 MS. BACHELDER: I'm sorry. I was looking 11 at 51. 12 MR. DRZYZGA: 51 is different. 57 is multi 13 employer agreement to my knowledge. 14 JUDGE MUHL: Thank you. 15 MR. DRZYZGA: And that's what it should 16 say. I believe it's a blank copy. There is no 17 signature on it to my recollection. 18 MS. BACHELDER: You're right. 19 MR. DRZYZGA: I got something right today. 20 That's good. Progress. 21 JUDGE MUHL: David, I just sent you an 22 electronic file that will have the exhibit. 23 MR. REYNOLDS: I'm not getting it up on Nex 24 Gen. 25 JUDGE MUHL: I have got all the exhibits</p>
<p style="text-align: right;">Page 1589</p> <p>1 only one I plan on using. If I reference other 2 exhibits they will be ones you used today that he 3 already has in front of him. 4 MS. BACHELDER: Can you print out 51, too, 5 GC 51. 6 MR. BUTTRICK: Thank you. 7 MR. DRZYZGA: And to help your gatekeeper, 8 if you go into Nex Gen the case reference is 9 7-CB-225631. The target or exhibit name is EXH and 10 it's EXH 07-case number 266531 IUOE Rieth-Riley 102119 11 Exhibit GC 1A through I through 79, if that helps you, 12 sir. 13 MR. REYNOLDS: Let me go into it. 14 MR. DRZYZGA: I would do a search by EXH. 15 If you can do the filter to EXH and it's probably 20 16 documents down or so. 17 MR. REYNOLDS: Okay. Bear with me here. 18 MR. DRZYZGA: That's fine, sir. I 19 appreciate your help. 20 MR. BUTTRICK: We're printing them on our 21 end, too. So that should be done shortly. 22 MR. DRZYZGA: Just so you know 57 is the 23 multi employer agreement if that helps. 24 MS. BACHELDER: No, it is -- 25 MR. DRZYZGA: Multi employer bargaining</p>	<p style="text-align: right;">Page 1591</p> <p>1 from the two weeks on my computer, so I can do that. 2 (Whereupon, a short break was taken.) 3 Q. (By Mr. Drzyzga) Mr. Rose, did you get a 4 chance to read that document GC 57? 5 A. Yes. I see it in front of me. 6 Q. Okay. Did you get a chance to review it? 7 A. Okay. 8 MR. REYNOLDS: Let me know if I need to 9 scroll. 10 MR. DRZYZGA: I think they printed a hard 11 copy for him. 12 MS. BACHELDER: Maybe you should take that 13 off the screen if he is got a hard copy. 14 JUDGE MUHL: Does everybody have a printed 15 copy? 16 MR. DRZYZGA: I don't. Mine is in the 17 office. 18 JUDGE MUHL: Okay. 19 Q. (By Mr. Drzyzga) If you could scroll down 20 a little bit for me, I'd appreciate it. Keep going 21 you can stop there. Just a couple questions on this. 22 You said you're a member of LRD for an extended period 23 of time. I'm not trying to misquote. Did you say 24 you're one of the original organizers with MITA and 25 LRD?</p>

<p style="text-align: right;">Page 1592</p> <p>1 A. One of the original organizers when MITA, 2 the association was formed. 3 Q. Okay. What year was that? 4 A. 2005. 5 Q. So you were with MITA during the time this 6 agreement was created; is that correct? 7 A. Yes. 8 Q. Did Rieth-Riley sign this agreement? 9 A. Yes. 10 Q. And were you involved in the construction 11 of the agreement or drafting of it? 12 A. Yes. 13 Q. Okay. So from what date did you originally 14 sign this agreement to the best of your recollection? 15 A. I believe it was early in 2018. 16 Q. So this is prior to any bargaining or 17 attempts to bargain with the Union; correct? 18 A. No. We had meetings all the way back into 19 2016. 20 Q. Okay. But you signed this agreement and 21 you were involved in its creation; is that correct, as 22 member of LRD? 23 A. Yes. 24 Q. Okay. Let's go to Company 12. 25 JUDGE MUHL: Is this the group Mr. Buttrick</p>	<p style="text-align: right;">Page 1594</p> <p>1 bringing grievance forward or talk about topics of 2 concern that signatory contractors had that worked 3 with MITA -- that were MITA members. 4 A. In my 20-year history of negotiating 5 contracts both with MRBA and MITA I never had a 6 meeting where we sat down and talked about specific 7 contract language that we knew the other side was 8 going to propose in upcoming negotiation. 9 Q. You knew they were going to make proposals 10 in upcoming negotiation; is that correct? 11 A. We already had a meeting prior -- 12 Q. That's a "yes" or "no" question. It's a 13 "yes" or "no" question? 14 A. Can you restate the question please? 15 Q. Sure. You knew they were going to make a 16 proposal in upcoming contract negotiations; correct? 17 A. Correct. 18 Q. And was the hiring hall provision that was 19 discussed during your testimony ever incorporated into 20 the 2013 and 2018 agreement? 21 A. No. 22 Q. Were any of those proposals -- I believe 23 there were two other that you mention subcontracting 24 clause was that modified or included in 2013 to 2018 25 agreement?</p>
<p style="text-align: right;">Page 1593</p> <p>1 sent around? 2 MR. DRZYZGA: Yes. Your Honor, I won't be 3 using any exhibit that we haven't looked at today that 4 wasn't in Mr. Buttrick's group. 5 JUDGE MUHL: I want to make sure everybody 6 knows where to get it. 7 MR. DRZYZGA: It's Company 12. It was sent 8 to me in a zip file. 9 JUDGE MUHL: Does everybody have a copy? 10 MS. BACHELDER: Yes. 11 Q. (By Mr. Drzyzga) Mr. Rose, did you get a 12 chance to review it? 13 A. Yes, sir. 14 Q. I want to be clear at the top it says sent 15 from Mark Johnston. I want to make clear I got the 16 date right it says Friday, May 27, 2016; is that 17 correct? 18 A. Yes. 19 Q. Okay. And isn't it true that this was two 20 years prior to the expiration of the 2013-2018 21 agreement that was currently in effect at the time? 22 A. Yes. 23 Q. And isn't it true periodically the Union 24 would sit down with a group of contractors and have 25 quarterly meetings to discuss the state of Union of</p>	<p style="text-align: right;">Page 1595</p> <p>1 A. No. 2 Q. Okay. You also testified or actually it's 3 in the documents we don't want to discuss the current 4 grievances. Do you know what those grievances were 5 related to? 6 A. They were jurisdiction disputes, some were 7 with the laborers over saw cutters, whether they were 8 to be covered under laborers' agreement or operators 9 agreement and several others similar to that. 10 Q. Okay. So the current grievance related to 11 laborers or operating engineers? 12 A. Operating engineers, the operating 13 engineers filed the grievance. 14 Q. Did laborers also filed grievances? 15 A. I do not know. 16 Q. But you requested this meeting; is that 17 correct, MITA? 18 A. Mr. Johnston on behalf of LRD requested 19 this meeting, yes. 20 Q. Just a little bit about the LRD who is lead 21 speaker for LRD at the table? 22 A. That can vary from time to time from 23 meeting to meeting, typically Mr. Nystrom is the lead 24 with one or two others at this particular point in 25 time Mr. Johnston was the lead.</p>

1 Q. In past negotiations, though, it would
2 either be Mr. Johnston, yourself or Mr. Nystrom; is
3 that correct?

4 A. Or others depending on the craft or the
5 negotiation. It varied multiple times.

6 Q. With respect to the operating engineers and
7 road agreement who would be leads for MITA for, say,
8 2013 to 2018 agreements?

9 A. Mr. Nystrom.

10 Q. And who was the lead in the most recent
11 attempt to bargain with the Union?

12 A. Can you define "most recent attempt"?

13 Q. Well, starting with the correspondence you
14 discussed during your direct testimony beginning in
15 say April and May of 2018?

16 A. Mark Johnston.

17 Q. Mark Johnston was the lead, okay. I direct
18 your attention to General Counsel Exhibit 3. Do you
19 have that in front of you, sir. If you could pull
20 that out. It relates to 9(a) relationship with the
21 Union. Let me know when you're ready, sir?

22 A. I'm ready.

23 Q. Just a quick question. You indicated that
24 this relationship existed since 1993 based upon that
25 document GC 3; correct?

1 A. Yes.

2 Q. Okay. But in your October 11
3 correspondence you said there is mention of a recent
4 notification or finding out that you're engaged in
5 9(a) relationship. I believe you sent it on October
6 11, 2018. When did you realize that you were a 9(a)
7 contractor is my question?

8 A. Shortly before that letter went out. This
9 was signed by a gentleman who on our end was two
10 generations removed from those who were involved with
11 the negotiations on behalf of the company. That
12 coupled with the remodelling of our office and moving
13 of files, it took some time to find that subsequent to
14 another contractor realizing that he had one.

15 Q. Do you recall the date those when you
16 realized you were a 9(a) contractor with respect to
17 the bargaining obligation of Local 324?

18 A. Somewhere in the September time frame.

19 Q. September of what year, sir?

20 A. Of the year I sent the letter in October.

21 Q. 2018?

22 A. Yes.

23 Q. Okay. And could you just tell me who the
24 members of LRD were in June -- on June 1st of 2018,
25 if you know?

1 A. I know a number of members and that changed
2 over time, but if I go back to Exhibit 12 and look at
3 the gentlemen who are copied on that cc line.

4 Q. And yeah, just that's my confusion. You
5 said some other large contractors. I wasn't sure if
6 they were MITA contractors or not?

7 A. They are.

8 Q. Okay. Those are all the members of LRD,
9 that would be May 27 of 2016, not 2018?

10 A. I believe so. There may be one missing
11 there. I'd have to go back and look at files, but the
12 bulk of them are there plus a few extras, all of which
13 are MITA contractors, as you asked.

14 Q. If you could pull GC 47, please, sir?

15 A. Okay.

16 Q. That's the power of attorney; correct?

17 A. Correct.

18 Q. And that was first signed in 2008?

19 A. Yes.

20 Q. So at least since 2008, MITA was your power
21 of attorney. Why did you use them for collective
22 bargaining, sir?

23 A. That had been the past practice when we
24 were a member of MRBA. And when MRBA was merged with
25 AUC, we continued the practice. The gap between when

1 MITA was formed and 2008 was -- I assume was because
2 there wasn't a contract to be negotiated with any of
3 the crafts in that three-year window.

4 Q. Is there any benefit to bargaining in multi
5 employer environment that would benefit Rieth-Riley as
6 a company?

7 A. Historically, we looked at it that is the
8 best for the industry, but we have done both. We have
9 done multi employer and single employer.

10 Q. Right. But when you say "best for the
11 industry" how is it best for the industry?

12 A. Consistent terms and conditions for the
13 employers, the employees and the Union.

14 Q. Does it give the employer a benefit with
15 bargaining strategy or ability to leverage their power
16 in a group?

17 A. Possibly.

18 Q. Okay. So you say it benefits the industry.
19 I guess I'm trying to understand. What are all the
20 benefits that the industry receives through multi
21 employer bargaining?

22 A. Back to the consistency of terms and
23 conditions and rates. Ours is to some degree a
24 transient work force. To have an operator go from
25 company A to company B and have different contracts,

<p style="text-align: right;">Page 1600</p> <p>1 that is problematic for the employers, the employees 2 and the Union. 3 Q. So is it fair to say that changing from a 4 multi employer bargaining strategy to single employer 5 bargaining strategy could change -- could be a game 6 changer for the industry? 7 A. No. I don't believe so. There is a number 8 of contractors who are single. 9 Q. Your Honor, I just noticed Mr. Buttrick is 10 shaking his head no. I don't think he should be doing 11 that during my questioning, especially when he is in 12 the same room with his witness. 13 MR. BUTTRICK: In fairness, I wasn't 14 directing that at Mr. Rose, but at Kristi, my 15 paralegal. 16 MR. DRZYZGA: Sir, I don't know that. It 17 just doesn't look right. It looks like you're 18 coaching your witness. 19 JUDGE MUHL: Mr. Drzyzga, Mr. Buttrick 20 won't do that going forward. I didn't observe that 21 myself because I have my focus on the witness? 22 Q. (By Mr. Drzyzga) I look at everything or 23 try to. So there are benefits to bargaining in multi 24 employer environment including leverage at the 25 bargaining table; correct? I didn't hear a response.</p>	<p style="text-align: right;">Page 1602</p> <p>1 to Local 324; that's correct, right? 2 A. Shortly after we sent a letter to 324 3 requesting bargaining? 4 Q. Right. You did? 5 A. Yes. 6 Q. So you had two coordinated sessions and I 7 believe you said nine other bargaining sessions up 8 through September of 2019; correct? 9 A. No. We had two coordinated and eight 10 individual, total of ten. 11 Q. Total of ten and that went through 12 September 2019? 13 A. Correct. 14 Q. Okay. And when you locked out the 15 employees on September 4th, 2018, did you know you 16 were a 9(a) at the time? 17 A. Yes. 18 Q. Okay. 19 A. I believe at that time -- it's very close. 20 Q. And then when you initiated the 21 recuperation -- I'm going to say -- not to offend Mr. 22 Buttrick -- the recuperation of fringe payments from 23 your employees in October of 2018, you definitely knew 24 you were a 9(a) contractor at that time; is that 25 correct?</p>
<p style="text-align: right;">Page 1601</p> <p>1 JUDGE MUHL: We lost your audio. 2 THE WITNESS: Possibly. 3 Q. (By Mr. Drzyzga) Possibly. And how many 4 contractors were MITA signatories at the time of June 5 1, 2018, that were bound by the multi employer 6 agreement? 7 A. Which multi employer agreement are you 8 referring to? 9 Q. The one I just shared with you was GC 57, 10 the one that you helped draft and sign? 11 A. As of June 2018? 12 Q. Yes, sir. How many people had signed on to 13 that agreement? 14 A. I'd be guessing, but I would say roughly 15 plus or minus 40. 16 Q. Okay. So those are 40 voices coming to the 17 bargaining table collectively; correct? 18 A. Correct. 19 Q. Do you believe they would contain or have 20 more leverage than a single employer bargaining one on 21 one? 22 A. It depends on the situation. 23 Q. Fair enough. Isn't it true after you found 24 out at some point in time that you had a 9(a) 25 relationship you sent a letter requesting bargaining</p>	<p style="text-align: right;">Page 1603</p> <p>1 A. Yes. 2 Q. Okay. Now, I think it was company -- 3 hold on a second. The re-opener letter. I think it 4 was GC 4. Could you pull that, sir? I apologize. 5 It's GC 6. I got my notes wrong. I'm sorry. GC 6. 6 And that may be the notice from the FMCS, I believe. 7 A. It is. 8 Q. Is that correct? Now, I think you 9 testified earlier that that notice was sent on June 10 3rd, 2016? 11 A. That's the date it was submitted. 12 Q. Right. But isn't it true it's signed on 13 February 21st, 2018, by Mr. Stockwell on the bottom? 14 A. Yes. 15 Q. Obviously, you can't speak for Mr. 16 Stockwell, but isn't it true around this same period 17 of time, February 2018, Mr. Nystrom on behalf of LRD 18 sent out a notice terminating the agreement -- that 19 existing agreement; is that correct? 20 A. That is not correct. 21 Q. He didn't send out a document indicating 22 they were terminating the contract? 23 A. He sent out a document as a re-opener 24 letter for beginning negotiation for successor 25 agreement.</p>

<p style="text-align: right;">Page 1604</p> <p>1 A. A typical template letter.</p> <p>2 Q. Okay. So you could call it that and I can</p> <p>3 characterize it how I like to. Isn't it true it was</p> <p>4 around the same time he sent out that template letter?</p> <p>5 A. The date that's on the FMCS form is typed</p> <p>6 in, So I don't know who typed that in, but I believe</p> <p>7 Mr. Nystrom's letter was in that time frame. I have</p> <p>8 his letter here, which is GC 4. It was dated February</p> <p>9 19, 2018.</p> <p>10 Q. Okay. Fair enough. And going to Company</p> <p>11 27, when that letter was sent?</p> <p>12 A. You say it's a letter?</p> <p>13 Q. It may be an e-mail, Company 27.</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Nystrom was acting on behalf of MITA</p> <p>16 when he sent that letter; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you were still a member of LRD at that</p> <p>19 time so that letter was sent on your behalf as well?</p> <p>20 A. Yes.</p> <p>21 Q. And then the other question I have, except</p> <p>22 for the small brief period of time in August of 2018,</p> <p>23 in which you withdrew your POA, you were still an</p> <p>24 acting member of LRD for MITA; is that correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1606</p> <p>1 agreement? Was that your exhibit from earlier?</p> <p>2 Q. Yes, sir. GC 57.</p> <p>3 A. We did not sent a specific rescision letter,</p> <p>4 but it became a moot point when negotiations fell</p> <p>5 apart and was never enforced.</p> <p>6 Q. So you never rescinded it; correct?</p> <p>7 A. I never wrote a specific rescision letter,</p> <p>8 no.</p> <p>9 Q. Now, with respect to picket line misconduct</p> <p>10 on the I-96 job site that you heard about, did you</p> <p>11 ever physically view any of the incidents that you</p> <p>12 testified to earlier?</p> <p>13 A. I viewed videos of the activity that day</p> <p>14 that were forwarded to me by Mark Johnston.</p> <p>15 Q. You reviewed videos, and who owned those</p> <p>16 videos?</p> <p>17 A. Mr. Johnston.</p> <p>18 Q. Did you make the videos?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. Did you physically see the actual</p> <p>21 incidents on the I-96 project yourself and view them</p> <p>22 with your own eyes?</p> <p>23 A. No, sir.</p> <p>24 Q. How about for the incident on the Escanaba</p> <p>25 project; did you ever see those firsthand?</p>
<p style="text-align: right;">Page 1605</p> <p>1 Q. So at all times basically from January 1st</p> <p>2 until October of 2018, you were except for that small</p> <p>3 window in August on the LRD and a member of MITA; is</p> <p>4 that correct?</p> <p>5 A. Correct.</p> <p>6 JUDGE MUHL: Hold on a second. I want to</p> <p>7 make sure I heard that right. Still a member of LRD</p> <p>8 and of MITA during that period in August, the August</p> <p>9 8th to 28th period, when it there was no signed POA or</p> <p>10 when you revoked POA?</p> <p>11 THE WITNESS: No. Prior thereto.</p> <p>12 JUDGE MUHL: Okay. Elaborate on that for</p> <p>13 me so I have the understanding right.</p> <p>14 MR. DRZYZGA: We were part of the LRD and a</p> <p>15 MITA member until we rescinded our POA. When we</p> <p>16 rescinded our POA we were not part of the LRD. We</p> <p>17 were just a MITA member.</p> <p>18 JUDGE MUHL: Just a MITA member during that</p> <p>19 time period, not LRD.</p> <p>20 THE WITNESS: Correct.</p> <p>21 JUDGE MUHL: Okay. Thank you, sir.</p> <p>22 Q. (By Mr. Drzyzga) Did you ever rescind the</p> <p>23 multi employer agreement at any time that we talked</p> <p>24 about earlier.</p> <p>25 A. Did we ever rescind the multi employer</p>	<p style="text-align: right;">Page 1607</p> <p>1 A. No, sir.</p> <p>2 Q. Now, you had some conversations with a</p> <p>3 gentleman by the name of Keersan; is that correct?</p> <p>4 A. Keersan.</p> <p>5 JUDGE MUHL: Mr. Drzyzga, before you move</p> <p>6 on there, I-96, remind me where that was.</p> <p>7 MR. DRZYZGA: That was --</p> <p>8 JUDGE MUHL: That's Ajax Paving?</p> <p>9 MR. DRZYZGA: That's Ajax Paving.</p> <p>10 JUDGE MUHL: That's all I need. Thank you.</p> <p>11 Q. (By Mr. Drzyzga) Yes, sir. Now with</p> <p>12 respect to all the things you and Mr. Keersan spoke</p> <p>13 about, did you ever actually firsthand view those</p> <p>14 incidents as they occurred?</p> <p>15 A. No, sir.</p> <p>16 Q. And with respect to the upper peninsula</p> <p>17 Zenith Tech project, did you actually see that</p> <p>18 incident occur?</p> <p>19 A. Not in person, no, sir.</p> <p>20 Q. Isn't it true in October 2018 Mr. Stockwell</p> <p>21 told you that he did not want to engage in multi</p> <p>22 employer bargaining, but he would be willing to meet</p> <p>23 with you and you could bring whoever you wanted?</p> <p>24 A. His letter to MITA said he was not going to</p> <p>25 engage in multi employer bargaining, that's correct.</p>

1 Q. Okay. No further questions. Thank you for
2 your time, sir.

3 JUDGE MUHL: Ms. Bachelder, cross exam?

4 MS. BACHELDER: Yes.

5 EXAMINATION

6 QUESTIONS BY MS. BACHELDER:

7 Q. Hello, Mr. Rose. I'm Amy Bachelder. We
8 haven't formally met before. It's nice to put a face
9 on the name finally?

10 A. Likewise.

11 Q. I'd like to go back to that 9(a) agreement.
12 Exactly how did you discover that you had the 9(a)
13 agreement?

14 A. There is a gentleman bite name of John
15 Fortier from Bacco Construction, who is a little
16 grayer and longer in the tooth than I am who was
17 involved with the negotiations and the ongoing at
18 that time. And he seemed to recollect -- and I
19 remember the conversation with him he went to a safety
20 deposit box and found their version of their 9(a)
21 agreement because he had forgotten about it. And once
22 I had heard of that, I asked our folks to dig through
23 our archives. And as I mentioned we went through
24 major office expansion and moved a lot of people to
25 different offices and files around, and it took us a

1 bit to find it.

2 Q. So it was Bacco that put you on the hunt
3 for it so to speak?

4 A. Correct.

5 Q. And about when did you hear from Bacco?

6 A. Again, it was somewhere in the August/
7 September time frame of that year.

8 Q. And when you actually found the 9(a)
9 agreement, did it have the cover letter from -- I
10 think it was Sam Pardone?

11 A. Yes. I believe that's in the exhibit.

12 Q. What did you do when you found the 9(a)
13 agreement?

14 A. We started to discover whether it was valid
15 and who signed it on both sides to make sure it was in
16 effect. And then tried to figure out what that meant
17 for us going forward.

18 Q. Did you at some point inform any of the
19 other contractors for MITA that you had a 9(a)
20 agreement?

21 A. I informed Mr. Nystrom, and who he informed
22 I cannot vouch for.

23 Q. Okay. When did you inform Mr. Nystrom?

24 A. Again, somewhere in that August/September
25 time frame.

1 Q. How did you inform Mr. Nystrom?

2 A. I believe by phone.

3 Q. Were there any writings between you and Mr.
4 Nystrom or you and anybody when you discovered that
5 document?

6 A. I don't recall.

7 Q. Did you inform anybody other than Mr.
8 Nystrom?

9 A. Our in-house counsel, Mr. Konopinski and
10 Chad Loney.

11 Q. Okay. And when you informed those people,
12 did you do so in writing or orally?

13 A. I know I did orally. I can't recall if it
14 was in writing.

15 Q. Have you searched your e-mails to see if
16 there is any documentation of when you informed
17 anybody about that?

18 A. Yes.

19 Q. And did you find anything?

20 A. No.

21 Q. Did you search for other documents that
22 might show when you informed somebody of the 9(a)
23 agreement?

24 A. Yes.

25 Q. And did you find anything?

1 A. No.

2 Q. So is it your testimony there is no e-mail,
3 text, written document that would say when you found
4 the 9(a) agreement?

5 A. They might exist, but I don't have them in
6 my files and I don't recall.

7 Q. Okay. And you said you have looked for
8 such a document?

9 A. Yes.

10 Q. And you have said it's in August or
11 September time frame, is it your recollection it was
12 before the start of the lockout?

13 A. Yes.

14 Q. And did you inform Mr. Nystrom before the
15 start of the lockout?

16 A. I believe so.

17 Q. And, again, you believe all those
18 communications with Mr. Nystrom were oral rather than
19 in writing?

20 A. There may be written exist, but I have
21 nothing in my record.

22 Q. During the events before the lockout, there
23 were a number of contractors who signed that multi
24 employer bargaining agreement; correct?

25 A. Correct.

<p style="text-align: right;">Page 1612</p> <p>1 Q. And I'm talking about GC 57 that you 2 identified. 3 A. Correct. 4 Q. And most of the contractors involved who 5 had given power of attorney to MITA sign it; isn't 6 that correct? 7 A. I believe a majority, yes. 8 Q. And you stated that you know Mark 9 Filmanowicz? 10 A. Yeah. 11 Q. And he is the president of Payne & Dolan? 12 A. Correct. 13 Q. Is he also the president of Zenith Tech? 14 A. I don't know what his title is with the 15 sister company. I just know he is involved with the 16 sister company. 17 Q. And by sister company you mean there is 18 some kind of common ownership? 19 A. Correct. 20 Q. Now, isn't it true that Payne & Dolan 21 signed such a multi employer bargaining agreement? 22 A. They did. 23 Q. Okay. I would ask Mr. Reynolds to put up 24 GC 78. 25 JUDGE MUHL: David, did you get the e-mail</p>	<p style="text-align: right;">Page 1614</p> <p>1 custodian. 2 MS. BACHELDER: Right, but it still should 3 be there as marked. 4 MR. REYNOLDS: Would it be in Nex Gen? 5 JUDGE MUHL: Let's go off the record. 6 (Whereupon, a short break was taken.) 7 Q. (By Ms. Bachelder) Mr. Rose, are you 8 looking at GC 78? 9 A. Yes, ma'am. 10 Q. And can you identify that as Payne & 11 Dolan's authentic multi employer bargaining agreement? 12 A. Not myself. These would have went to Mr. 13 Nystrom. I know Mark, but I can't vouch for his 14 signature. He was the one that filled this out. 15 Q. Is it your understanding Payne & Dolan 16 signed such an agreement? 17 A. I believe so. 18 Q. And is it your understanding that Zenith 19 Tech signed such an agreement? 20 A. I believe so, but I can't be for sure. 21 Q. And you said that they would have been sent 22 to Mr. Nystrom. Did Mr. Nystrom share them with you? 23 A. I don't believe so. He was the caretaker. 24 Q. Okay. We'll ask Mr. Nystrom about them 25 then. Did you at some point sent a copy of your 9(a)</p>
<p style="text-align: right;">Page 1613</p> <p>1 with all the exhibits? 2 MR. REYNOLDS: Yeah. Do you see it? 3 MS. BACHELDER: You need to go beyond that 4 sheet. 5 MR. BUTTRICK: Can we print this out? Is 6 this the agreement? 7 MS. BACHELDER: It's the one that's signed. 8 MR. REYNOLDS: Is this the page? 9 MS. BACHELDER: I wanted -- what number is 10 that? That's not the one I'm looking for. 11 JUDGE MUHL: That's 79. 12 MS. BACHELDER: Sorry. I wanted 78. 13 MR. REYNOLDS: There is nothing in 78. 14 JUDGE MUHL: That's showing as skipped. 15 This is the one labeled as GC 78, and then we get to 16 the agreement itself. 17 MR. DRZYZGA: I think it may be in rejected 18 exhibits. 19 MS. BACHELDER: I don't think it was 20 rejected. It was marked. 21 MS. KENDALL: It was skipped on the first 22 week. 23 MS. BACHELDER: I have it marked. 24 MR. DRZYZGA: This is the one that no one 25 could identify the signature and we had to recall the</p>	<p style="text-align: right;">Page 1615</p> <p>1 agreement to Mr. Nystrom? 2 A. I believe so, but I can't be sure, but I 3 believe I might have, yeah. 4 Q. Do you know how you sent that? 5 A. I don't recall. 6 Q. Have you looked to see how you sent it or 7 when you sent it? 8 A. Yes. 9 Q. And have you discovered -- 10 A. I don't have any record. 11 Q. Okay. Except for the period of time in 12 August, have you ever rescinded your power of attorney 13 with MITA? 14 A. Prior to the 324 recent negotiations, I 15 don't believe we've ever rescinded our power of 16 attorney in the past. 17 Q. And since there was a brief period of a 18 couple weeks in August where you had rescinded it; 19 correct? 20 A. That sounds accurate. 21 Q. And the rescision was intended to see if the 22 funds would accept contributions when the rescisions 23 were in effect; is that true? 24 A. To see if they would accept the fringes and 25 continue negotiations with us as a single employer.</p>

<p style="text-align: right;">Page 1616</p> <p>1 Q. So did you make a request to Local 324 2 during that time to bargain individually? 3 A. We had to jump through every hoop and ever 4 goal post they had moved to get to that point. And at 5 that point they actually sent our fringe check back at 6 one point, and every indication they gave us was they 7 had no intention to negotiate. So our opinion was the 8 ball was in their court. 9 Q. And my question to you is did you ever make 10 a request to Local 324 to bargain as an individual 11 contractor? 12 A. Not at that time. 13 Q. Not until October of 2018; correct? 14 A. We had a written letter October 11th, I 15 believe. 16 Q. And that was the first time you requested 17 bargaining as an individual employer; correct? 18 A. I go all the way back to 2016 and we sat 19 with them in our office in Lansing. They came to us 20 specifically to talk to us as Rieth-Riley only because 21 we're the ones that had major concern. So as far as I 22 am concerned we began on a single basis that far back. 23 Q. Okay. But by 2018, you were back in multi 24 employer basis; isn't that true? 25 A. We were part of LRD with MITA again. Yeah,</p>	<p style="text-align: right;">Page 1618</p> <p>1 correct? 2 A. Please clarify what you're asking. 3 Q. It was also so that the contractors could 4 take a consistent position when communicating with 5 employees about the status of negotiations? 6 A. I think it was so the contractor had the 7 exact same information. So everybody communicated 8 accurate information with any of the second grade this 9 person tells that person tells that person tells that 10 person. 11 Q. So there were template letters that were 12 created by the LRD and were handed out to the 13 contractors; correct? 14 A. Correct. 15 Q. And most of the contractors sent out the 16 template letters that LRD recommended; correct? 17 A. I have no idea what contractor sent what 18 out. 19 Q. Okay. This letter that is Union 18 is one 20 of those letters that was recommended to be sent out; 21 is that true? 22 A. I believe so. 23 Q. And this letter on your version does not 24 have a date. Do you recall when this was sent out? 25 A. No, I do not.</p>
<p style="text-align: right;">Page 1617</p> <p>1 again, it didn't matter to us which way it was. 2 Q. Did you communicate that to the Union? 3 A. In writing, no. 4 Q. I would ask you to take a look at Union 5 Exhibit 18. Do you have that in front of you, Mr. 6 Rose? 7 A. Yes, ma'am. 8 Q. That's a letter you sent out to your 9 employees; isn't that true? 10 A. That was a memo that was sent out. I 11 believe it was drafted and I signed it and it went 12 out. 13 Q. And to back up a little bit, during 2018 14 there were a number of letters that were drafted by 15 the LRD that were provided to contractors to send out 16 to employees; is that true? 17 A. I believe so. 18 Q. And the point of that was to present a 19 coordinated position so that everybody was on the same 20 page as far as the contractors? 21 A. I believe that was to communicate 22 consistent information so that everybody had the same 23 accurate information. 24 Q. And that contractors were all taking the 25 same position vis a vis the Union and employees;</p>	<p style="text-align: right;">Page 1619</p> <p>1 Q. I would say to Mr. Buttrick that Rebekah 2 Ramirez and I had an e-mail conversation about this 3 letter where she indicated that it was sent out about 4 May 20 or 21, 2018, and I would ask if you can agree 5 it that. You may have to talk to Rebekah about it. 6 MR. BUTTRICK: I have no reason to doubt 7 your representation, but I'll check with Rebekah. 8 Q. (By Ms. Bachelder) Look at -- Mr. Rose, 9 does May 20 or 21, 2018 jive with what is contained in 10 this letter? 11 A. That's quite possible, yes. 12 Q. And in this letter you're communicating to 13 your employees that you're part of a multi employer 14 group; correct? 15 A. That's what it states, yes. 16 Q. And this letter was sent out after the 17 Union had withdrawn from multi employer bargaining; is 18 that correct? 19 A. I don't believe so. 20 Q. Do you recall when the Union sent out their 21 letter withdrawing from multi employer bargaining? 22 A. I have to go back and look at the exhibit 23 from this morning. 24 Q. Why don't you go ahead? I think the date 25 is May 2nd.</p>

<p style="text-align: right;">Page 1620</p> <p>1 A. Are you referring to Exhibit 29?</p> <p>2 Q. Is that the one that has Doug Stockwell's</p> <p>3 e-mail?</p> <p>4 A. The grammatical error?</p> <p>5 Q. Yes. The grammatical error.</p> <p>6 A. Yes. You are correct. It's dated May 2nd,</p> <p>7 2018.</p> <p>8 Q. So, in fact, if Union 18 was sent out on</p> <p>9 May 20 or 21, that's after Mr. Stockwell had withdrawn</p> <p>10 from multi employer bargaining?</p> <p>11 A. If that is the date, that would be correct.</p> <p>12 Q. I offer Union 18, Your Honor.</p> <p>13 MR. DRZYZGA: No objection.</p> <p>14 MR. BUTTRICK: No objection.</p> <p>15 JUDGE MUHL: U18 is received. I'm sorry.</p> <p>16 I'm slow on the draw getting myself to be unmuted.</p> <p>17 Union 18 is received.</p> <p>18 Q. (By Ms. Bachelder) Mr. Rose, in addition</p> <p>19 to sending out template letters that contractors could</p> <p>20 use, LRD also sent out documents such as talking</p> <p>21 points for the labor dispute; is that correct?</p> <p>22 A. I believe so.</p> <p>23 Q. Take a look at Union 19 please. Is that</p> <p>24 document is talking points that was handed out by LRD</p> <p>25 or distributed by LRD to contractors?</p>	<p style="text-align: right;">Page 1622</p> <p>1 in early 2018.</p> <p>2 Q. Do you know how you shared it? Did you</p> <p>3 e-mail it; did you mail it; did you hand it in person?</p> <p>4 A. I don't recall, but I would assume it was</p> <p>5 e-mailed.</p> <p>6 Q. I offer Union 19, Your Honor.</p> <p>7 MR. DRZYZGA: No objection.</p> <p>8 MR. BUTTRICK: No objection.</p> <p>9 JUDGE MUHL: Union 19 is received.</p> <p>10 Q. (By Ms. Bachelder) Mr. Rose, I'd like to</p> <p>11 go back to Company 12, which is the May 27, 2016</p> <p>12 e-mail from Mark Johnston to a variety of other</p> <p>13 people?</p> <p>14 A. What was that number again?</p> <p>15 Q. 12.</p> <p>16 A. Okay.</p> <p>17 Q. And the people on that e-mail send list are</p> <p>18 not all MITA contractors; is that correct?</p> <p>19 A. They are all MITA contractors; not all of</p> <p>20 them are members are the MITA LRD.</p> <p>21 Q. Okay. What about Brent Campbell?</p> <p>22 A. I would have to go back and check my</p> <p>23 records if they were on the LRD, but I don't believe</p> <p>24 they were at that particular point in time.</p> <p>25 Q. But you're saying that they are a MITA</p>
<p style="text-align: right;">Page 1621</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall when that was done?</p> <p>3 A. I believe that was early on when we were</p> <p>4 just working on bargaining rights.</p> <p>5 Q. Early?</p> <p>6 A. Early in '18. I'm sorry. Early in 2018.</p> <p>7 Q. And what do you mean by working on</p> <p>8 bargaining rights?</p> <p>9 A. There was a number of contractors who have</p> <p>10 historically signed their bargaining rights year and</p> <p>11 year and year with MITA, and we were also talking to</p> <p>12 other contractors who just typically would sign a</p> <p>13 white paper and go along with the MITA agreement and</p> <p>14 have them also sign the bargaining rights.</p> <p>15 Q. Do you recall who drafted these talking</p> <p>16 points?</p> <p>17 A. I do.</p> <p>18 Q. Who?</p> <p>19 A. I did.</p> <p>20 Q. Did anybody else participate in the talking</p> <p>21 point drafting?</p> <p>22 A. I shared this with Mr. Nystrom after I put</p> <p>23 it together.</p> <p>24 Q. And do you know when that was?</p> <p>25 A. I assume it would be around the same time</p>	<p style="text-align: right;">Page 1623</p> <p>1 contractor?</p> <p>2 A. Yes. For instance, I can tell you Chris</p> <p>3 Parrick with Dan's Excavating is a MITA contractor,</p> <p>4 but not a member of LRD. He had a representative of</p> <p>5 the company there, but not him. Bruce Welling from</p> <p>6 Harding Construction at the end was not a member of</p> <p>7 LRD.</p> <p>8 Q. At some point at the end of August there</p> <p>9 was a meeting of contractors vote on what action to</p> <p>10 take next, August of 2018; is that correct?</p> <p>11 A. August of 2018, before or after the strike?</p> <p>12 Q. Well, what strike are you referring to? My</p> <p>13 understanding that September was a lockout not a</p> <p>14 strike.</p> <p>15 A. There was a strike on the Ajax project.</p> <p>16 Q. Oh, I don't call that a strike. I'm</p> <p>17 talking about at the end of August. At the time</p> <p>18 whatever happened at Ajax happened, did you have a</p> <p>19 meeting of contractors?</p> <p>20 A. After the incident on the Ajax project we</p> <p>21 did have a meeting of contractors, yes.</p> <p>22 Q. Okay. And at this meeting, who led the</p> <p>23 meeting?</p> <p>24 A. Mr. Nystrom.</p> <p>25 Q. And about how many contractors were there,</p>

<p style="text-align: right;">Page 1624</p> <p>1 if you recall?</p> <p>2 A. I would say over 30.</p> <p>3 Q. Were you present?</p> <p>4 A. Yes.</p> <p>5 Q. And during that meeting did you discuss the</p> <p>6 fact that all the contractors had agreed with each</p> <p>7 other to take the same action?</p> <p>8 A. We had a discussion that we would support</p> <p>9 each other against the wood straw strike action to</p> <p>10 prevent the Union from playing divide and conquer.</p> <p>11 Q. Was it discussed that would you all sign</p> <p>12 the multi employer bargaining agreement and were bound</p> <p>13 to support each other?</p> <p>14 A. The agreement was brought up. I don't know</p> <p>15 about the bound part of it. It may have been</p> <p>16 discussed. I don't recall.</p> <p>17 Q. But most of the contractors, if not all the</p> <p>18 contractor there, had signed that multi employer</p> <p>19 bargaining agreement; correct?</p> <p>20 A. Most of them were in attendance, yes.</p> <p>21 Q. And after that meeting -- strike that.</p> <p>22 What was the vote at the meeting? Who voted -- how</p> <p>23 many voted for further action?</p> <p>24 A. Define "further action".</p> <p>25 Q. Did you decide to have a lockout at that</p>	<p style="text-align: right;">Page 1626</p> <p>1 everybody but my client. Have you had an opportunity</p> <p>2 to review it, Mr. Rose?</p> <p>3 A. Yes.</p> <p>4 Q. And do you recognize that as a letter that</p> <p>5 Mr. Nystrom sent?</p> <p>6 A. Yes.</p> <p>7 Q. And did you get a copy of it?</p> <p>8 A. Yes.</p> <p>9 Q. And it refers to a meeting that occurred on</p> <p>10 August 28, 2018. Does that sound right?</p> <p>11 A. That sounds correct.</p> <p>12 Q. And the letter is dated August 29 of 2018;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. Now, can you tell me at this time -- at</p> <p>16 the time of the meeting or this letter, did you know</p> <p>17 that Rieth-Riley was a 9(a) employer?</p> <p>18 A. I can't recall for sure. It's right around</p> <p>19 that time, possibly before.</p> <p>20 Q. Okay. And you said it was certainly by the</p> <p>21 time of the lockout; correct?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. And in this letter Mr. Nystrom cites the</p> <p>24 multi employer bargaining agreement that various</p> <p>25 contractors signed as a reason for them being</p>
<p style="text-align: right;">Page 1625</p> <p>1 point?</p> <p>2 A. Yes.</p> <p>3 Q. How many voted for the lockout?</p> <p>4 A. I do not remember the count.</p> <p>5 Q. Was it close?</p> <p>6 A. I don't recall. I think it was more than</p> <p>7 just slight majority.</p> <p>8 Q. And after that meeting MITA communicated</p> <p>9 with contractors that were present and contractors</p> <p>10 that were not present; is that correct?</p> <p>11 A. That sounds correct.</p> <p>12 Q. And Mr. Nystrom sent them a letter saying</p> <p>13 we've had a vote, and this is what happened?</p> <p>14 A. That sounds correct as well.</p> <p>15 Q. And in that communication, Mr. Nystrom</p> <p>16 reminded people that they had signed on to the multi</p> <p>17 employer bargaining agreement; is that true?</p> <p>18 A. I don't recall, but that's possible.</p> <p>19 Q. And Mr. Nystrom said in that communication</p> <p>20 that everybody that signed that agreement is expected</p> <p>21 to lock out their employees; correct?</p> <p>22 A. I don't recall exactly, but that's</p> <p>23 possible, yes.</p> <p>24 Q. Okay. I ask you to take a look at GC 51.</p> <p>25 We're having our own copy made here. I sent it to</p>	<p style="text-align: right;">Page 1627</p> <p>1 obligated to lock out; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Mr. Rose, do you know if Dan's</p> <p>4 Excavating signed the multi employer bargaining</p> <p>5 agreement?</p> <p>6 A. I believe they did, but I can't vouch for</p> <p>7 it for a hundred percent.</p> <p>8 Q. Would you recognize the signature of</p> <p>9 somebody from Dan's on that?</p> <p>10 A. Probably not.</p> <p>11 Q. Okay.</p> <p>12 MR. BUTTRICK: Your Honor, I hate to</p> <p>13 interrupt any questioning. You might have froze on my</p> <p>14 screen. We're checking on GC 51 might be on our priv</p> <p>15 log. If it is consistent with your earlier ruling, we</p> <p>16 may want to make an objection. We're just checking</p> <p>17 that now.</p> <p>18 JUDGE MUHL: GC 51, do I have that right?</p> <p>19 MS. BACHELDER: Yeah. It was received into</p> <p>20 evidence.</p> <p>21 JUDGE MUHL: Hold on, Mr. Drzyzga is</p> <p>22 frozen. Let's see if we can get him back moving again</p> <p>23 with sound.</p> <p>24 MR. DRZYZGA: I'm still here. Can you hear</p> <p>25 me?</p>

<p style="text-align: right;">Page 1628</p> <p>1 MS. BACHELDER: Your picture is frozen.</p> <p>2 MR. DRZYZGA: I'm back. Can you hear me?</p> <p>3 My picture shows up, I guess I got a bad Internet</p> <p>4 connection.</p> <p>5 MR. BUTTRICK: May we go off the record for</p> <p>6 a moment?</p> <p>7 JUDGE MUHL: Let's go off the record.</p> <p>8 (Whereupon, a short break was taken.)</p> <p>9 JUDGE MUHL: Let's go back on record.</p> <p>10 Q. (By Ms. Bachelder) Thank you. Mr. Rose,</p> <p>11 while we were quibbling about some of these things we</p> <p>12 saw you walk off and go back and forth over the</p> <p>13 screen. What were you doing during the break that we</p> <p>14 had?</p> <p>15 A. I was doing my presidential duties of</p> <p>16 cleaning up the room after lunch while everybody was</p> <p>17 out of the room and I took a walk back to the bathroom</p> <p>18 and back to here.</p> <p>19 Q. Did you have any conversations with anybody</p> <p>20 during the break?</p> <p>21 A. No.</p> <p>22 Q. Prior to testifying here today, did you</p> <p>23 review documents?</p> <p>24 A. I met with Mr. Stuart Buttrick and Mr.</p> <p>25 Konopinski.</p>	<p style="text-align: right;">Page 1630</p> <p>1 not.</p> <p>2 Q. Okay. And that would be Greg Campbell</p> <p>3 would be one?</p> <p>4 A. I believe so.</p> <p>5 Q. And what other ones?</p> <p>6 A. Possibly Bruce Blowing and Evan Weiner, the</p> <p>7 last one.</p> <p>8 Q. So since they hadn't given power of</p> <p>9 attorney to MITA, they would be contractors who</p> <p>10 negotiate individually with Local 324; is that</p> <p>11 correct?</p> <p>12 A. Either negotiate individually or simply</p> <p>13 sign on to a white paper subsequent to the conclusion</p> <p>14 of the MITA negotiation.</p> <p>15 Q. Okay. But they would not be people who</p> <p>16 were part of multi employer bargaining; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Let's go to Company 2, which deals</p> <p>19 with your internal documents to pay over the wage</p> <p>20 scale?</p> <p>21 A. Pardon me. Did you say 2?</p> <p>22 Q. Yes. That's what I have?</p> <p>23 A. The 2013 to 2018 agreement?</p> <p>24 Q. No.</p> <p>25 JUDGE MUHL: Company 2.</p>
<p style="text-align: right;">Page 1629</p> <p>1 Q. Did you review any documents in preparation</p> <p>2 for your testimony?</p> <p>3 A. I looked at several of the documents that</p> <p>4 Mr. Buttrick presented this morning.</p> <p>5 Q. Anything else?</p> <p>6 A. No.</p> <p>7 Q. In preparation have you read any of the</p> <p>8 transcripts in the proceeding?</p> <p>9 A. No.</p> <p>10 Q. Or have you been told what witnesses</p> <p>11 testified to?</p> <p>12 A. No.</p> <p>13 Q. Go back to Company 12 please, which is the</p> <p>14 e-mail that was sent in 2016?</p> <p>15 A. Okay.</p> <p>16 Q. Do you have it in front of you?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. You said that all the people on there were</p> <p>19 MITA members; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. But they weren't all part of LRD; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And not all of them were contractors who</p> <p>24 gave power of attorney to MITA; isn't that true?</p> <p>25 A. I would believe there is several that did</p>	<p style="text-align: right;">Page 1631</p> <p>1 Q. I'm looking at this document.</p> <p>2 A. I know which one. Let me page through the</p> <p>3 stack here.</p> <p>4 Q. I know there is a lot of paper.</p> <p>5 JUDGE MUHL: It's the paying over union</p> <p>6 scale document, Company 2.</p> <p>7 THE WITNESS: Yes, I have it.</p> <p>8 Q. (By Ms. Bachelder) And I think you said</p> <p>9 this is an internal document that the Company requires</p> <p>10 to be done when you're paying over union scale; is</p> <p>11 that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And it appears from the document you have</p> <p>14 to do this ever year; is that correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And the reason you might pay over scale is</p> <p>17 because somebody has increased responsibility; is that</p> <p>18 correct?</p> <p>19 A. Responsibility or skills.</p> <p>20 Q. And many of these are people who were</p> <p>21 working as foremen; is that true?</p> <p>22 A. There are a number of them that are. There</p> <p>23 is a number of them who aren't.</p> <p>24 Q. When you granted the raise in, I think it</p> <p>25 was July of 2018, the \$2 an hour raise, did you fill</p>

<p style="text-align: right;">Page 1632</p> <p>1 out this kind of form or did somebody?</p> <p>2 A. No.</p> <p>3 Q. And that \$2 an hour was given to all your</p> <p>4 employees; is that correct?</p> <p>5 A. That's correct. All our operator</p> <p>6 employees.</p> <p>7 Q. And that was given, as I think you said,</p> <p>8 because it was consistent with the package offer that</p> <p>9 MITA had made; true?</p> <p>10 A. And consistent with past practice as well.</p> <p>11 Q. Have you given raises since 2018?</p> <p>12 A. Yes.</p> <p>13 Q. To operators?</p> <p>14 A. Yes.</p> <p>15 Q. And have you filled out these forms when</p> <p>16 you gave them?</p> <p>17 A. No.</p> <p>18 Q. What raises have been given across the</p> <p>19 board to operators since 2018?</p> <p>20 A. Let me clarify that. There has been</p> <p>21 specific individual one, but as you mentioned across</p> <p>22 the board we would have proceeded with the same dollar</p> <p>23 amount that was in the proposal from 2018. So that</p> <p>24 would have been second year would have been second \$2.</p> <p>25 Q. So you gave a second raise of \$2 consistent</p>	<p style="text-align: right;">Page 1634</p> <p>1 those bargaining unit employees were making per hour;</p> <p>2 isn't that correct?</p> <p>3 MR. BUTTRICK: I'm going to object to the</p> <p>4 relevance at this point.</p> <p>5 JUDGE MUHL: Isn't this information that</p> <p>6 belongs in another case?</p> <p>7 MS. BACHELDER: Well, it's coming up in</p> <p>8 another case, but I think it also goes to bad faith.</p> <p>9 JUDGE MUHL: Well, we're looking at 2018</p> <p>10 time period here, so I think I have heard enough on</p> <p>11 this topic.</p> <p>12 Q. (By Ms. Bachelder) Okay. Mr. Rose, let's</p> <p>13 talk about the conversations that you said you had --</p> <p>14 is it John Keersan?</p> <p>15 A. John Keersan. I believe it's spelled</p> <p>16 K-e-e-r-s-a-n.</p> <p>17 Q. And these conversations that you had with</p> <p>18 Mr. Keersan, were these at MITA board meetings?</p> <p>19 A. They were at MITA board meetings or MITA</p> <p>20 member meetings, LRD meetings as well.</p> <p>21 Q. And were these during the actual meeting or</p> <p>22 were these side bar conversations you had with Mr.</p> <p>23 Keersan?</p> <p>24 A. I believe they were both.</p> <p>25 Q. Do MITA board meetings have minutes?</p>
<p style="text-align: right;">Page 1633</p> <p>1 with the MITA proposal of May 20th, or somewhere</p> <p>2 around there, 2018?</p> <p>3 A. That proposal that had five years and \$8</p> <p>4 over five years, yes.</p> <p>5 Q. So that would have been in 2019, that you</p> <p>6 gave?</p> <p>7 A. I believe so.</p> <p>8 Q. What month would it have been?</p> <p>9 A. June 1st is the anniversary date.</p> <p>10 Q. And did you give another raise in 2020?</p> <p>11 A. Yes.</p> <p>12 Q. And -- I'm sorry to interrupt.</p> <p>13 A. That's my understanding. Yes, we did.</p> <p>14 Q. Consistent with the MITA proposal; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Did you notify the Union that any of those</p> <p>17 raises were given?</p> <p>18 A. No; not to my recollection.</p> <p>19 Q. Did you bargain with the Union?</p> <p>20 A. We sent them the proposal and they failed</p> <p>21 to respond.</p> <p>22 Q. And when you say you sent the proposal,</p> <p>23 you're talking about 2018?</p> <p>24 A. Correct.</p> <p>25 Q. And the Union has requested to know what</p>	<p style="text-align: right;">Page 1635</p> <p>1 A. Typically, I believe so. Yes.</p> <p>2 Q. Do LRD meetings have minutes?</p> <p>3 A. I believe there is some that do and some</p> <p>4 that don't. I don't recall a hundred percent. I'm</p> <p>5 not responsible for them.</p> <p>6 Q. So do you know whether any of the minutes</p> <p>7 of MITA board meetings -- MITA or LRD meetings reflect</p> <p>8 these conversations?</p> <p>9 A. I have no recollection or no idea.</p> <p>10 Q. Have you looked?</p> <p>11 A. No, I don't keep the minutes.</p> <p>12 Q. I'm not asking if you keep the minutes.</p> <p>13 I'm asking if you have looked at the minutes.</p> <p>14 A. Let me clarify that. I don't retain them.</p> <p>15 Q. And I'm not asking whether you retain them</p> <p>16 or -- I'm sorry -- you mean -- strike that.</p> <p>17 Regardless of whether you keep them, have you looked</p> <p>18 at the minutes?</p> <p>19 A. No.</p> <p>20 Q. Who approves the minutes of MITA board</p> <p>21 meetings?</p> <p>22 A. I believe that's done by MITA Board of</p> <p>23 Directors.</p> <p>24 Q. Would that be done at the next meeting?</p> <p>25 A. That sounds consistent with past practice,</p>

<p style="text-align: right;">Page 1636</p> <p>1 yes.</p> <p>2 Q. Who approves minutes of LRD?</p> <p>3 A. I would believe. I don't know that they</p> <p>4 are actually approved. They may keep them, but I</p> <p>5 don't know if they are voted upon.</p> <p>6 Q. Okay. Has MITA ever represented</p> <p>7 Rieth-Riley on an individual basis?</p> <p>8 A. Possibly related to our plant agreement</p> <p>9 that we had in the past.</p> <p>10 Q. The plant agreement with who?</p> <p>11 A. Local 324.</p> <p>12 Q. Plant workers are now part of the road</p> <p>13 agreement; isn't that true?</p> <p>14 A. I believe that's been rolled in now.</p> <p>15 Q. You made a reference in your testimony to</p> <p>16 Local 324 moving the goal post. You said that several</p> <p>17 times, do you recall that?</p> <p>18 A. I do.</p> <p>19 Q. And one of things that you said was Local</p> <p>20 324 moving the goal post was the refusal of the funds</p> <p>21 to accept contributions; is that correct?</p> <p>22 A. That is correct.</p> <p>23 Q. And you understood that the various funds</p> <p>24 are separate legal entities from the Union; isn't that</p> <p>25 true?</p>	<p style="text-align: right;">Page 1638</p> <p>1 sent in 2018 as being typical re-openers; is that</p> <p>2 true?</p> <p>3 A. That's true.</p> <p>4 Q. Isn't it true that what you called MITA's</p> <p>5 re-opener, in fact, said that they wanted -- that</p> <p>6 they were terminating the contract?</p> <p>7 A. That's not the way I understand it. That</p> <p>8 word is in the document -- that standard word that's</p> <p>9 been in numerous re-openers and do not have the</p> <p>10 connotation that you are referring to.</p> <p>11 Q. I'm not talking about any connotation. I'm</p> <p>12 talking about the wording. Isn't it true the letter</p> <p>13 says that they are terminating the contract?</p> <p>14 A. It is re-opener letter that has the word</p> <p>15 "terminate" in it, correct.</p> <p>16 Q. And isn't it also true that Rieth-Riley</p> <p>17 received a letter from the Union terminating the</p> <p>18 contract?</p> <p>19 A. I believe we received a letter that said</p> <p>20 they were terminating the relationship with MITA.</p> <p>21 Q. Could Mr. Reynolds bring up GC 5, Stuart,</p> <p>22 maybe you want to print it out.</p> <p>23 MR. BUTTRICK: Yeah, if you don't mind.</p> <p>24 Thank you.</p> <p>25 MR. REYNOLDS: Is this the right one?</p>
<p style="text-align: right;">Page 1637</p> <p>1 A. I believe I heard that. I don't know for a</p> <p>2 fact myself, but I believe I have heard it.</p> <p>3 Q. And you know that MITA had representatives</p> <p>4 who were present at fund meetings where those subjects</p> <p>5 were discussed; isn't that true?</p> <p>6 A. I believe they were and I believe they</p> <p>7 voiced their objection.</p> <p>8 Q. And do you know also that trust funds are</p> <p>9 normally staffed by an equal number of management and</p> <p>10 union trustees?</p> <p>11 A. That's my general understanding, yeah.</p> <p>12 Q. And some of the management trustees did not</p> <p>13 side with the MITA trustees; isn't that true?</p> <p>14 A. I believe that is the case.</p> <p>15 Q. So it was really the funds that made the</p> <p>16 decisions based on -- it was the funds that made the</p> <p>17 decision to accept or not accept funds, not the Union;</p> <p>18 right?</p> <p>19 A. I don't know that for a fact. I don't know</p> <p>20 who drove that decision. I was not part of those</p> <p>21 discussions.</p> <p>22 Q. But you do understand they are a separate</p> <p>23 legal entity from the Union?</p> <p>24 A. That's what's been represented to me, yes.</p> <p>25 Q. You talked about the re-openers that were</p>	<p style="text-align: right;">Page 1639</p> <p>1 MS. BACHELDER: I can't see it.</p> <p>2 MR. REYNOLDS: I'm sharing my screen right</p> <p>3 now.</p> <p>4 JUDGE MUHL: You're not showing up as</p> <p>5 having shared your screen on my participant list.</p> <p>6 MR. REYNOLDS: Here we go. Is this what</p> <p>7 you're looking for?</p> <p>8 Q. (By Ms. Bachelder) Yes. Mr. Rose, can you</p> <p>9 see that?</p> <p>10 MR. BUTTRICK: Wait a minute, Amy. We can</p> <p>11 print it out just for a second.</p> <p>12 (Whereupon, a short break was taken.)</p> <p>13 Q. (By Ms. Bachelder) Mr. Rose, can you see</p> <p>14 it?</p> <p>15 A. I can.</p> <p>16 Q. And isn't it true that's a letter you</p> <p>17 received from Doug Stockwell terminating the contract?</p> <p>18 A. It looks like that is in fact the case that</p> <p>19 it's terminating the agreement, but it mentions</p> <p>20 nothing about the bargaining relationship.</p> <p>21 Q. You can take it down, Mr. Reynolds. Mr.</p> <p>22 Rose, you were talking about the Davis Bacon Act, and</p> <p>23 that covers certain jobs that are performed by your</p> <p>24 company; is that correct?</p> <p>25 A. It encompasses a vast amount of jobs we do.</p>

1 Q. And Davis Bacon requires you to pay a
2 certain total package to employees; is that correct?

3 A. Correct. Based on classification.

4 Q. And what kind of jobs does it cover?

5 A. Typically it covers operators, laborers,
6 Teamsters, carpenters, cement masons, iron workers,
7 bricklayers.

8 Q. What is a Davis Bacon job, not what
9 classification, is it publicly bidded jobs or what?

10 A. Publicly funded projects, yes.

11 Q. And for each classification there will be a
12 package rate that is a wage rate plus a benefit rate
13 and your only obligation under Davis Bacon is to pay
14 that total rate to the employees; isn't that true?

15 A. I believe that is correct.

16 Q. So if the fund or if a fund won't accept
17 your contributions, you could pay the total package
18 required by Davis Bacon; correct?

19 A. Technically, yes, but that would put you in
20 a position of double jeopardy of double paying the
21 entire fringe package at some point in time.

22 Q. And the jeopardy is to you not to the
23 employees or the Union; correct?

24 A. Correct.

25 Q. Now, the vacation pay, the way that works

1 is that throughout the year an employer deducts an
2 amount of money from the check of the employee; is
3 that correct?

4 A. That is correct.

5 Q. You said -- is it about 15 percent?

6 A. Fifteen percent of base wage is one
7 component, the other component is \$.5 per hour.
8 That's why if you can back to the payroll register,
9 there were two entries.

10 Q. And that's put in a fund for the employees;
11 correct?

12 A. As far as I know, I believe, but I'm not
13 familiar with how the fund handled it.

14 Q. And employees can only withdraw that money
15 at certain times of the year; correct?

16 A. I don't know how their rules are for that.

17 Q. Okay. You know that the employee doesn't
18 get it right after you pay it; correct?

19 A. Correct. I believe that they receive that
20 at the end of the season.

21 Q. And Union dues are normally deducted from
22 that fund before the vacation is paid out, do you
23 understand that?

24 A. I believe that's the case.

25 Q. And so by paying employees their vacation

1 payment directly, you bypass the Union being able to
2 get dues out of them; is that correct?

3 A. I don't believe that's a correct phrasing.
4 The Union refused to take the checks. They refused to
5 accept the money. We willingly sent the check not
6 only once, but when they began rejecting checks we
7 kept resending the checks each month. That was their
8 choice.

9 Q. But you then -- you paid it directly to the
10 employee and that was a benefit to the employee to
11 have the money in hand rather than have to wait;
12 correct?

13 A. One might look at it that way and one might
14 look at it as not a benefit because some guys like to
15 have that received at end of the year to help him get
16 through the winter. So I don't know how an individual
17 operator would have viewed that.

18 Q. But the dues wouldn't be automatically
19 deducted; you understand that?

20 A. I believe from what you represented how the
21 fund handled it, yeah.

22 Q. And you didn't make pension contributions
23 directly on the check; correct?

24 A. Correct.

25 Q. Even though had you done all of them, it

1 might have solved your Davis Bacon problems?

2 A. I don't believe I follow your logic.

3 Q. Well, as we just discussed, if you paid the
4 entire package, wage and fringe benefit, you are not
5 going to be found to be out of compliance with Davis
6 Bacon?

7 A. If we paid the total fringe package in cash
8 on the check, you are correct.

9 Q. It would have cost you some money, but you
10 would have been in compliance with Davis Bacon then?

11 A. Some is an understatement, yes.

12 Q. Even a lot; right? I think Mr. Buttrick
13 asked you if you rescinded the multi employer
14 bargaining agreement. Do you recall him asking that?

15 A. I do.

16 Q. And you said you hadn't; is that true?

17 A. I believe -- I do not recall that we
18 formally rescinded that.

19 Q. Isn't it true that some contractors did
20 formally rescind the multi employer bargaining
21 agreement?

22 A. I have no recollection of that one way or
23 the other?

24 Q. Isn't true that some contractors asked to
25 be let out of the multi employer bargaining agreement?

<p style="text-align: right;">Page 1644</p> <p>1 A. I can recall one which was I. F. Brady, and 2 they were. 3 Q. And when did they ask to be let out of it? 4 A. I don't recall when that happened. 5 Q. Was it after the lockout? 6 A. I don't recall. 7 Q. Well, it would appear that Mr. I. F. Brady 8 thought it was something he had to get out from under 9 anyway; is that correct? 10 MR. BUTTRICK: Objection; calls for 11 speculation. There is no foundation that he would 12 know what Mr. I. F. Brady thought or said. 13 JUDGE MUHL: Sustained. 14 Q. (By Ms. Bachelder) There were discussions 15 among the LRD about whether to let contractors out of 16 the multi employer bargaining agreement; isn't that 17 true? 18 A. I believe there is discussions in reference 19 to the I. F. Brady case, beyond that I don't recall. 20 Q. With respect to the I. F. Brady case, was 21 there a vote of LRD? 22 A. I don't recall. 23 Q. Did you see communication from Mr. Nystrom 24 with respect to withdrawing from the multi employer 25 bargaining agreement?</p>	<p style="text-align: right;">Page 1646</p> <p>1 Thank you for your testimony and your time here today. 2 Just remember not to discuss your testimony with any 3 witness or potential witness during the -- 4 MS. BACHELDER: Doesn't he get another 5 chance? 6 JUDGE MUHL: He's been on the stand long 7 enough. There was no follow-up questions. Let's go 8 off the record. 9 (Whereupon, a short break was taken.) 10 JUDGE MUHL: Let's go back on the record. 11 Rieth-Riley can call their next witness. 12 MR. BUTTRICK: We call Chad Loney. 13 JUDGE MUHL: Mr. Loney, good afternoon. 14 I'm Judge Muhl. Can you raise your right hand for me, 15 please. Do you solemnly swear the testimony you're 16 going to give here today is the truth, the whole 17 truth, and nothing but the truth? 18 THE WITNESS: I do. 19 JUDGE MUHL: Sir, I know you're in a room 20 with Mr. Buttrick. But can you tell me for the record 21 where you're located right now? 22 THE WITNESS: Our corporate office in 23 Goshen, Indiana. 24 JUDGE MUHL: Rieth-Riley? 25 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 1645</p> <p>1 A. Can you be a little more specific? 2 Q. No. 3 A. Then I don't know how to answer your 4 question. 5 Q. Are you saying you didn't see such document 6 or you don't understand the question? 7 A. I don't understand your question. 8 Q. Okay. Do you recall seeing any 9 correspondence from Mr. Nystrom saying that certain 10 contractors had requested to be relieved from their 11 obligation under the multi employer bargaining 12 agreement? 13 A. I don't recall. 14 Q. I have nothing further. 15 JUDGE MUHL: Redirect? 16 MR. BUTTRICK: Just a quick moment, Your 17 Honor, if I may. 18 JUDGE MUHL: Sure. Let's go off the 19 record. 20 (Whereupon, a short break was taken.) 21 JUDGE MUHL: Let's go back on the record. 22 Anything further, Mr. Buttrick? 23 MR. BUTTRICK: Nothing further, Your Honor. 24 Thank you. 25 JUDGE MUHL: Mr. Rose, you're excused.</p>	<p style="text-align: right;">Page 1647</p> <p>1 JUDGE MUHL: And anybody else besides Mr. 2 Buttrick there with you? 3 THE WITNESS: Yes. Rieth-Riley's general 4 counsel, Ron Konopinski and Stuart's paralegal Kristi 5 -- my apologies. 6 MR. BUTTRICK: Mr. Loney doesn't know Ms. 7 Kendall. 8 JUDGE MUHL: No problem. Make sure since 9 we're in the video setup it's especially important to 10 just try and let counsel finish the question to you 11 first before you respond and not talk over one another 12 when you're testifying. If there is an objection 13 made, try and stop and not answer before I have a 14 chance to rule on it. If you have any problems here, 15 counsel or anybody else here, let me know and we'll 16 get that fixed. And the only communication you can 17 have while you're testifying is with the attorneys who 18 are questioning you and the only documents you can 19 look at are the exhibits that they present to you, if 20 any. Do you have any questions for me, sir, before we 21 begin? 22 THE WITNESS: I do not. 23 JUDGE MUHL: Okay. Then we can proceed 24 with direct testimony. 25 EXAMINATION</p>

Exhibit 2



Michigan Infrastructure & Transportation Association

May 18, 2018

Douglas Stockwell
Business Manager
Operating Engineers Local 324
500 Hulet Drive, Suite 500
Bloomfield Township, MI 48302

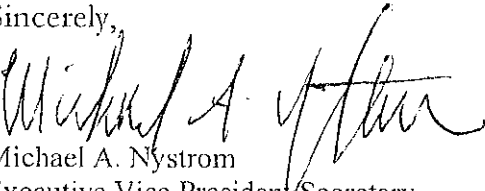
Dear Doug:

It must be an extremely busy time for you with the various negotiations that you have going on across the state because we have not received a response from you regarding our email request for negotiation dates (attached), which was sent on April 11th.

Based on your (attached) letter from February 21st, "... the Union desires to make changes to the current Collective Bargaining Agreement now in effect, for wage increases and other items...", the MITA Road Contract Negotiations Committee offers the attached first proposal in order to initiate negotiations. We kept this offer simple and to the point, and yet we feel that this is a fair proposal that keeps everyone working.

Let us know how you would like to proceed, if you would like to meet or if you would like to make a counter-proposal.

Sincerely,



Michael A. Nystrom
Executive Vice President/Secretary

MAN/sjs

Attachments



From: **Michael Nystrom** mikenystrom@mi-ita.com
Subject: **Road Negotiations**
Date: **April 11, 2018 at 11:04 AM**
To: **Douglas W. Stockwell** dstockwell@uog324.org
Cc: **Mark Johnston** mjohnston@qajaspaving.com, **Keith Rose** krose@mcclintock.com, **Mike Malloure** mamalloure@catapult.com,
Tom Stover tstover@stoebeconstruction.com, **Bob Adcock** badeck@nprate.com, **Dan Eriksson** deneriksson@heffmanbroome.com,
Brian Hoffman bhoffman@heffmanbroome.com, **Brian Schember** bjschember@danscox.com, **Ryan O'Donnell**
ryanodonnell@anlaan.com
Bcc: **Scharg, Donald** DScharg@FBDILAW.COM

Doug -

The MITA Road Negotiations Committee would like to begin comparing dates to hold for negotiation sessions in May since we know that you have other contract negotiations happening during that time. The committee would like to offer Tuesday, May 8th and Thursday, May 10th as a couple dates to begin discussions. Let me know if either of these dates work with your schedule and please feel free to forward other dates that may work as well further into the month.



Michigan Infrastructure Trade Association
11111 Woodward Avenue
Suite 200
Farmington Hills, Michigan 48334-3000
www.mi-ita.com
Follow us on [Facebook](#)
or [Twitter](#)
For more information, please contact:
Pete Hapner, Executive Director
Phone: 248.340.1100

Helping you find the right people for your business. [FixMIState](#) [Facebook](#) [Twitter](#)

OPERATING
ENGINEERS



OPERATING ENGINEERS 324

Douglas W. Stockwell - Business Manager

February 21, 2018

Mr. Michael A. Nystrom,
Executive Vice President
Michigan Infrastructure and Transportation Association
PO Box 1640
Okemos, MI 48805-1640

Re: MITA Road/OE Local 324 Agreement
2018 Opener

Dear Mr. Nystrom:

This letter is the notice to you as provided for in the Agreement between your Company and the International Union of Operating Engineers, Local 324 - AFL-CIO, that the Union desires to make changes to the current Collective Bargaining Agreement now in effect, for wage increases and other items to become effective June 2, 2018.

The Union hereby offers to meet and confer for the purpose of negotiating a new contract, and we reserve the right, during the course of negotiations, to introduce additional changes.

Sincerely,

Douglas W. Stockwell,
Business Manager

DWS/bfufcw876

Certified Mail No. 7015 0640 0002 4464 8306 Return Receipt Requested

MITA Proposal #1
Operating Engineers – Roads

May 18, 2018

1. Maintain current contract language other than miscellaneous updates, such as name, dates and titles.
2. Contract Term: Five-Year (June 1, 2018 – May 31, 2023)
3. Wage adjustments according to the following schedule:
 - Effective June 1, 2018 - \$2.00
 - Effective June 1, 2019 - \$2.00
 - Effective June 1, 2020 - \$2.00
 - Effective June 1, 2021 - \$1.00
 - Effective June 1, 2022 - \$1.00

***Any Fringe Benefit adjustment will be allocated by the Union from the negotiated increases first or come off the Base Rate.**

4. MITA reserves the right to add, delete or amend any provisions.

Douglas W. Stockwell
Business Manager
OE 324

Date

Michael A. Nystrom
Executive Vice President/Secretary
MITA

Date

Exhibit 3

Amy Bachelder

From: Drzyzga, Robert <Robert.Drzyzga@nrlrb.gov>
Sent: Saturday, February 20, 2021 1:18 PM
To: Muhl, Charles
Cc: Buttrick, Stuart R.; Amy Bachelder; Preston, Scott R.
Subject: Rieth Riley Proposed Complaint amendment Case 07-CA-234085

Your Honor, please be advised that when we resume the hearing on March 15, 2021, I plan on proposing an amendment to paragraph 6 of the Complaint in Case 07-CA-234085. The proposed amendment will allege that the Respondent not only implemented unilateral wage increases to unit employees on or about July 23, 2018, but in addition unilaterally implemented wage increases on or about June 1, 2019 and June 1, 2020, without bargaining with the Union.

Exhibit 4

Veritext, LLC - Mid-Atlantic Region

Tel. 888-777-6690 Email: Billing-Midatlantic@veritext.com
Fed. Tax ID: 20-3132569



Bill To: Amy Bachelder
Nickelhoff & Widick PLLC
333 W Fort St
Ste 1400
Detroit, MI, 48226

Invoice #: 4859906
Invoice Date: 3/2/2021
Balance Due: \$1,396.00

Case: IUOE-Reith Riley v. ()

Proceeding Type: Hearing

Job #: 4212848 | Job Date: 2/18/2021 | Delivery: Normal

Location: detroit, MI

Billing Atty: Amy Bachelder

Scheduling Atty: | NLRB Region 07 Detroit MI

Witness: 07-CA-234085 - Vol 10 - 2/18	Quantity	Price	Amount
Certified Transcript	237.00	\$3.00	\$711.00
Witness: 07-CA-234085 - Vol 11 - 2/19	Quantity	Price	Amount
Certified Transcript	219.00	\$3.00	\$657.00
	Quantity	Price	Amount
Electronic Delivery and Handling	1.00	\$28.00	\$28.00

Notes:

Invoice Total: \$1,396.00
Payment: \$0.00
Credit: \$0.00
Interest: \$0.00
Balance Due: \$1,396.00

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult <http://www.veritext.com/services/all-services/services-information>

Please remit payment to:
Veritext
P.O. Box 71303
Chicago IL 60694-1303
Fed. Tax ID: 20-3132569

To pay online, go to www.veritext.com

Veritext accepts all major credit cards
(American Express, Mastercard, Visa, Discover)

Invoice #: 4859906
Invoice Date: 3/2/2021
Balance Due: \$1,396.00